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EXHIBITS.

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Exhibit 3—Stipulation on Commerce entered into between Medo Photo Supply Corporation and Sidney Reitman, attorney for the National Labor Relations Board. Received in evidence at Fol. 591. Printed at Fol. 676 226

Exhibit 4-A—Application for Membership in the American Federation of Labor signed by Nickie Pergola. Received in evidence at Fol. 33. Printed at Fol. 683 228

Exhibit 4-B—Application for Membership in the American Federation of Labor signed by William Goshgarian. Received in evidence at Fol. 33. Referred to at Fol. 685 229

Exhibit 4-C—Application for Membership in the American Federation of Labor signed by Joseph Gorgonzola. Received in evidence at Fol. 33. Referred to at Fol. 685 229

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Exhibit 4-F—Application for Membership in the American Federation of Labor signed by Angelo Seminara. Received in evidence at Fol. 33. Referred to at Fol. 685 229

Exhibit 4-G—Application for Membership in the American Federation of Labor signed by Gerard W. Munrett. Received in evidence at Fol. 40. Referred to at Fol. 685 229

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Exhibit 4-H—Application for Membership in the American Federation of Labor signed by Stanley Abelow. Received in evidence at Fol. 40. Referred to at Fol. 685 229

Exhibit 4-I—Application for Membership in the American Federation of Labor signed by William Koch. Received in evidence at Fol. 40. Referred to at Fol. 685 229

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Exhibit 4-K—Application for Membership in the American Federation of Labor signed by Charles M. Kohler. Received in evidence at Fol. 40. Referred to at Fol. 685 229

Exhibit 4-L—Application for Membership in the American Federation of Labor signed by Edmund Schraeder. Received in evidence at Fol. 40. Referred to at Fol. 686 229

Exhibit 4-M—Application for Membership in the American Federation of Labor signed by Albert Petrone. Received in evidence at Fol. 40. Referred to at Fol. 686 229

Exhibit 4-N—Application for Membership in the American Federation of Labor signed by Robert Ritchie. Received in evidence at Fol. 40. Referred to at Fol. 686 229

Exhibit 4-O—Application for Membership in the American Federation of Labor signed by Raymond G. Bruchbacher. Received in evidence at Fol. 40. Referred to at Fol. 686 229

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Exhibit 4-Q—Application for Membership in the American Federation of Labor signed by Danny Matthews. Received in evidence at Fol. 40. Referred to at Fol. 686 229

Exhibit 4-R—Application for Membership in the American Federation of Labor signed by Herbert C. Schroer. Received in evidence at Fol. 40. Referred to at Fol. 686 229

Exhibit 5—Letter, dated May 22, 1941, from the American Federation of Photo Employees Union, Local 21314, by A. Stoltman, President to Medo Photo Supply Co. Received in evidence at Fol. 45. Printed at Fol. 688 230

Exhibit 10—Statement signed by William Goshgarian. Received in evidence at Fol. 241. Printed at Fol. 691 231

Exhibit 11—Statement signed by Angelo Seminara, dated November 14, 1941. Received in evidence at Fol. 396. Printed at Fol. 693 231

Exhibit 12—Petition for Investigation and Certification of Representatives pursuant to Section 9(c) of the National Labor Relations Act. Received in evidence at Fol. 461. Printed at Fol. 697 233

Exhibit 14—Payroll of the employees of Medo for the week ending June 6, 1941. Received in evidence at Fol. 464. Printed at Fol. 703 235

Respondent's Exhibits:

Exhibit 2—Conference held June 9, 1941 at the office of Seligsberg & Lewis. Received in evidence at Fol. 421. Printed at Fol. 709 237

Exhibit 3—Medo payroll for week ending August 2, 1941. Received in evidence at Fol. 543. Printed at Fol. 727 243

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IN THE

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

NATIONAL LABOR RELATIONS BOARD,	Petitioner,
v.	
MEDO PHOTO SUPPLY CORPORATION,	Respondent.

Certificate of the National Labor Relations Board.

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, "In the Matter of Medo Photo Supply Corporation and American Federation of Photo Employees Union, Local 21[illegible] A.F.L.," the same being Case No. C-2219 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony before Trial Examiner Guffey on April 30 and May 1, 1942, together with all exhibits introduced in evidence.

Certificate of the National Labor Relations Board.

(2) Copy of Intermediate Report of Trial Examiner Guffey, dated June 8, 1942.

(3) Copy of order transferring case to the National Labor Relations Board, dated June 10, 1942.

(4) Copy of respondent's letter dated June 20, 1942, requesting oral argument before the Board.

(5) Copy of respondent's exceptions to Intermediate Report.

(6) Copy of notice of hearing, for purpose of oral argument before the Board, dated July 13, 1942.

(7) Copy of list of appearances at oral argument held before the Board July 23, 1942.

(8) Copy of decision, findings of fact, conclusions of law and order issued by the National Labor Relations Board on September 5, 1942, together with affidavit of service and United States Post Office return receipts thereof.

IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set her hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 17th day of November, 1942.

BEATRICE M. STERN,
Executive Secretary,
National Labor Relations Board.

(Seal)

(1)

Stenographic Transcript of Testimony at Hearing of April 30, 1942.

BEFORE THE
NATIONAL LABOR RELATIONS BOARD,
SECOND REGION.

In the Matter of MEDO PHOTO SUPPLY CORP. and AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION, LOCAL 21314, A. F. of L.	Case No. II-C-3762.

24th Floor, 120 Wall Street,
New York, New York,
Thursday, April 30, 1942.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m.

Before: William F. Guffey, Jr.,
Trial Examiner.

Appearances:

Sidney Reitman, Esq., 120 Wall Street, New York, New York, attorney for the National Labor Relations Board.

Al Stoltman, Esq., 254 West 54 Street, New York, New York, appearing for American Federation of Photo Employees Union, Local 21314, A. F. of L.

Seligsberg, Friedman & Berliner, Esqrs., 29 Broadway, New York, New York, by

William E. Friedman, Esq., appearing for Medo Photo Supply Corporation.

Stenographic Transcript of Testimony at Hearing of April 30, 1942.

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(4)

PROCEEDINGS.

* * * * *

(10)

Mr. Reitman: Mr. Examiner, it is stipulated that the American Federation of Photo Employees Union, Local 21314, A. F. of L., is a labor organization within the meaning of the National Labor Relations Act.

Mr. Friedman: We have admitted that in the answer.

11 Trial Examiner Guffey: Let me ask you a question in view of your statement:

In your answer you have denied certain paragraphs in the complaint, and with respect to the paragraphs that remain you have made no averments. Do you admit the paragraphs which you do not deny?

Mr. Friedman: I have followed the practice in pleading in New York State where, if you do not make mention of such things, they are deemed admitted, and where you

(11)

specifically mention them they are not admitted, and one
12 of the paragraphs which I have not denied is the fact that this union is a regular union within the terms of the National Labor Relations Act.

Trial Examiner Guffey: Aside from that, you are willing to stipulate to what Mr. Reitman said?

Mr. Friedman: Oh, certainly, I have admitted it.

* * * * *

A. Stoltman, for Board, Direct.

AL STOLTMAN was called as a witness by and on behalf 13
of the National Labor Relations Board and, being first duly sworn, was examined and testified as follows:

Direct Examination:

Trial Examiner Guffey: State your name and address to the reporter, please.

The Witness: Al Stoltman, 254 West 54 Street, New York City.

Q. (By Mr. Reitman) Is that your office address, Mr.

(12)

Stoltman? A. Yes, I get most of my mail there. 14

Q. What is your home address? A. 206 Mantense Street, Brooklyn, New York.

Mr. Friedman: Will you speak up a little bit so that we can hear you, Mr. Stoltman?

The Witness: All right, Mr. Friedman.

Q. (By Mr. Reitman) Mr. Stoltman, are you affiliated with the American Federation of Photo Employees Union, Local 21314, A. F. of L.? A. I am.

Q. In what capacity? A. President.

Q. As president, what are your duties? A. My duties are to conduct all business conferences for the organization, 15
such as negotiating contracts, handling complaints and grievances.

Q. When a shop is organized, is a shop committee formed in that shop? A. Yes, sir.

Q. What are the functions of the shop committee? A. What are the functions of the shop committee? First of all, the shop committee which is set up prior to a contract being instituted in a plant is a little different than a shop committee that is later set up. The primary function of a shop committee set up at first is to assist the union in bar-

16 (13)

gaining, and its employees—I do not know how to put it exactly, but I would say that the shop committee does not act in a very active manner, and they more or less sit in on negotiations in an informative capacity.

Q. Do they assist you in bargaining? A. Yes.

Q. Who has the authority to bargain for the union? A. Only the business officials of the union.

Trial Examiner Guffey: Only who?

The Witness: Only the business officials of the union.

17 Q. (By Mr. Reitman) How many business offices do you have in your union? A. Just two.

Q. Who are they? A. Myself and Mr. Hiller, our secretary-treasurer.

Q. (By Mr. Reitman) Will you please try to keep your voice up so that everybody can hear you? A. Yes, sir.

Q. Did you at any time in the course of your functions as president of this union have occasion to deal with the Medo Photo Supply Corporation employees? A. I did.

Q. When? A. The early or middle part of May, 1941.

Q. In what manner did you deal with them? A. At that

18 (14)

time we were engaged in an active organization drive to organize all the photographic supply stores in New York, and during that time we came into contact with the Medo employees.

* * * * *

Q. (By Mr. Reitman) Did you talk to any employees of the Medo Photo Supply Company? A. I did.

Q. When? A. In the early part of May, 1941.

Q. Where? A. In the street in front of the plant during lunch hour, and after working hours.

Q. Do you recall now the names of any of these people? 19
A. I believe I could recall some of them.

Trial Examiner Guffey: You will have to speak a little louder. I cannot hear you.

(15)

The Witness: I am sorry. I believe I could recall some of them, yes, sir.

Q. (By Mr. Reitman) Will you tell us some of them?
A. One of them was Thomas Valentine, Mervin Sussman, Angelo Seminara, and there might have been a few others.
Q. What was the substance of your conversation?

Mr. Friedman: May I object? 20

Mr. Reitman: I will rephrase the question.

Q. (By Mr. Reitman) What was your conversation?

Mr. Friedman: Will you designate the particular individual to whom you are referring, so that we can have the conversation with each one of these people separately?

Q. (By Mr. Reitman) If you can. A. I do not think that I could recall the specific conversations which I had with each individual. Sometimes I spoke to them individually and sometimes I spoke to them collectively, and it would be a little difficult, even for the best memory, to do 21
that. The conversations, or the gist of the conversations, as I recall, I asked some of these boys first of all if they worked at Medo, and they said they did; and I asked them, did they know that the union was in the process of organizing all the photographic supply houses in New York, and they said they had heard something about it, and they had

(16)

seen some of our leaflets. I questioned them as to their working conditions, salaries, hours and other conditions of labor in the plant, and when they informed me about those,

22 I told them about other conditions which we had in other photographic establishments throughout the city.

Mr. Friedman: May I request that the witness tell us, as best he knows, what he did tell them, and not just that he told them about other conditions. I would like to know the conversations with the other individuals.

Trial Examiner Guffey: Just tell us, as nearly as you can, exactly what you told these people, and what they told you.

The Witness: I do not think I can recall every-
23 thing specifically. One thing which does stick in my mind—

Trial Examiner Guffey: I am not asking you for the particular language which you used.

The Witness: No, but even the specific details I could not remember, but one detail does stick in my mind. There was some talk about pay scales for different types of jobs, and we understood from the men that the errand boys were receiving $12 a week.

I told them that in most of our shops the errand boys received $17 a week.

24 I believe that there were other comparisons, but specific comparisons I could not remember. That one

happens to stick in my mind.

Q. (By Mr. Reitman) What did you do in line with your organizational drive? A. After these conversations, some of these men, either individually or collectively, indicated to me that they would like to see the union organize the shop.

Q. Did you distribute anything? A. Yes, we distributed leaflets.

Q. Where? A. In front of the plant.

Q. At what time? A. At noon hours and after work.

Q. About how long did this leaflet distribution take? A. Oh, I should imagine possibly a half hour to an hour in a day.

Q. About how many times did you distribute these leaflets? A. I don't think there were more than three or four leaflets distributed at the most.

Trial Examiner Guffey: Do you mean three or four different leaflets?

The Witness: Yes.

Trial Examiner Guffey: At different times?

The Witness: Yes.

Q. (By Mr. Reitman) Subsequent to your organizational drive did you have a meeting at the union offices?

(18)

A. We did.

Q. When was this meeting held? A. I believe that was the third week in May sometime.

Q. Would that be about the 21st of May? A. I think that was the date.

Q. Do you recall approximately how many people were present at that meeting? A. At the first meeting there were six employees that attended the meeting.

Mr. Friedman: How many, Mr. Stoltman?

The Witness: Six.

Trial Examiner Guffey: Where was that meeting held?

The Witness: That meeting was held at the union office.

Q. (By Mr. Reitman) Where was that located? A. 254 West 54 Street.

Q. What time of the day was it? A. After work, six o'clock or thereabouts.

28 Q. Do you remember the names of the people that were present at that meeting? A. I do.

Q. Who was present? A. Angelo Seminara, Thomas Valentine, Mervin Sussman, a fellow by the name of Schroer, Nick Pergola and I believe Joseph Gorgonzola.

(19)

Q. What took place at that meeting? A. These six men had come down to the union office, and they started to question us about different union contracts, and what would the advantages of organization mean to them?

Trial Examiner Guffey: When was this?

29 The Witness: May 21st, this particular meeting.

Trial Examiner Guffey: That was the meeting they came down to?

The Witness: Yes, sir. And we explained to them the various contracts which we held, and how the union goes about obtaining a contract, and at that time they all signed application cards.

Q. (By Mr. Reitman) Where were you when these cards were signed? A. I was in the room there.

Q. Did you see the cards signed by the men? A. Yes, sir. I distributed the cards myself, and had them signed, and took them up myself.

30 Q. I now show you a series of documents and ask you to identify them.

Trial Examiner Guffey: Will you have the reporter mark them for identification first, please?

Mr. Reitman: Yes, sir.

(Thereupon the documents above referred to were marked as Board's Exhibit 4-A, B, C. D, E, and F, inclusive, for identification.)

(20) 31

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Q. (By Mr. Reitman) Will you tell what they are.

Mr. Friedman: I object to that, your Honor. The documents speak for themselves. They have been marked for identification.

Trial Examiner Guffey: Overruled.

The Witness: These are standard forms of appli-

(21)

cation cards that we use.

Q. (By Mr. Reitman) What are they specifically? A. Specifically these are the application cards which were 32 signed by the Medo Employees for the union.

Q. When? A. They are dated.

Q. When were they signed; not when they were dated? A. May 21st.

Q. Where were they signed? A. In the union office.

Q. Are these the cards which you mentioned before having been signed in your presence? A. These are the selfsame cards.

Mr. Reitman: I offer these in evidence.

Trial Examiner Guffey: Any objection?

Mr. Friedman: Yes, I object to them. There has 33 been no identification of the signatures.

Trial Examiner Guffey: Objection overruled. They may be admitted.

(Thereupon the documents previously marked for identification as Board's Exhibit 4-A through F, were received in evidence.)

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(22)

Did you say these cards were signed in your presence?

34 The Witness: That is right.

Trial Examiner Guffey: At the May 21st meeting?

The Witness: That is right.

Q. (By Mr. Reitman) What else took place at that May 21st meeting? A. After the men had signed their cards, I distributed some blank cards to them, and told them in order to obtain a contract they would have to get the rest of the men in the shop to become members of the union; and they said that they had already talked to the boys and they didn't think that there would be any trouble in getting them to sign the cards.

35 Q. Were any other cards returned to you at any time? A. Yes.

Q. How many cards were returned to you? A. Some 12 more cards.

Q. When you say "some", do you mean 12 cards or do

you mean more or less than 12? A. I mean 12 cards.

Mr. Reitman: I ask that these cards be marked for identification. I suggest that you continue on from Board's Exhibit No. 4 with the next letter in the alphabet.

36 Trial Examiner Guffey: They may be marked Board's Exhibit 4-G to R for identification.

(Thereupon the documents above referred to were marked as Board's Exhibits 4-G, H, I, J, K, L, M, N, O, P, Q, and R, inclusive, for identification.)

Q. (By Mr. Reitman) I hand you Board's Exhibits for identification 4-G to R and ask you to identify this series? A. These are the 12 cards which I just mentioned.

Q. Will you explain what they are? A. These are the same as the other cards which I previously identified.

Q. Where did you get these cards? A. These cards I obtained in front of the plant of the Medo Photo Supply, and I think at least 10 of them were obtained in front of the plant, and one or two in the office. 37

Q. What office? A. The union office.

Q. Who gave you these cards? Do you recall? A. Angelo Seminara.

Q. Did anybody else give you any other cards? A. I don't think so.

(24)

Trial Examiner Guffey: Is the person who gave you these cards, one of the six who signed up at the first meeting? 38

The Witness: Yes.

Q. (By Mr. Reitman) What is the usual course of conduct to pursue in obtaining application cards for membership in your union?

Mr. Friedman: I object to that question as being entirely immaterial, on the ground that the witness has already testified that union cards were obtained in this case.

Trial Examiner Guffey: Overruled. You may answer.

39

The Witness: The usual procedure of obtaining application cards is to speak to workers generally, and if they indicate their desire to become affiliated with the union, we have them sign an application card, and we generally distribute to each man a number of blank cards, and with instructions to get his fellow employees to sign the cards, or else we give them to one or two men, who form sort of an organizing committee, as it were, and those men generally get other men to sign the cards.

40 Q. (By Mr. Reitman) Is that the practice which you pursued in this case? A. That is the general practice.

Q. And that is how you got these 12 cards? A. That is right.

(25)

Mr. Reitman: I offer these cards in evidence.

Mr. Friedman: I object to them on the ground that there has been no identification of the signatures.

Trial Examiner Guffey: The objection is overruled, and they may be admitted as Board's Exhibit 4-G to R.

41 I would like to know when these cards were handed to the witness.

Q. (By Mr. Reitman) When were these cards given to you? A. These cards were given to me within a day or two after the May 21st meeting.

Q. Where were they given to you? A. In front of the Medo Photo Supply Company.

Q. Were all of them given to you there? A. I have a recollection that at a second meeting one or two cards were handed to me. I know that the majority of these cards were given to me in front of the Medo Photo Supply.

42 Q. Mr. Stoltman, do you know where those 18 people who signed cards were employed in the company? A. I do.

Q. Where? A. They were employed in the so-called basement department of the firm which was I believe the wholesale department.

Q. Do you know whether this basement department was

(26)

divided in any way? A. Do you mean physically?

Q. Not physically. Do you know the nature of the duties performed down there? A. Oh, yes, there is a great deal

of difference between the duties performed by the people downstairs and the other employees.

Q. Were there any sub-departments downstairs? That is what I mean. A. I think you will have to make that a little clearer.

Q. What kind of work was done in the basement? A. In the basement there was shipping, receiving, picking of orders, packing, errand boys work out of there, I believe, and I believe truckmen's helpers, truck drivers' helpers.

Q. During the course of your discussion with these 18 people, who signed cards, did they at any time indicate their desires with respect to representation? A. They did

Q. Did they express their desires to you? A. They did.

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(27)

Q. (By Mr. Reitman) Did you, upon any occasion, communicate with the company subsequent to May 21, 1941? A. I did.

Q. When did you communicate with the company? A. I believe it was approximately a week after May 21st I wouldn't be too certain of the exact date.

Q. Did you send the company a letter? A. I did.

Q. I show you this document and will ask you to identify it. A. This is the letter we sent to the company by registered mail, informing them that we represented the employees and desire to meet with them for a contract.

• • • • •

(28)

(Thereupon the document above referred to was marked as Board's Exhibit 5 for identification.)

Trial Examiner Guffey: Is there any objection to Board's Exhibit No. 5?

Mr. Friedman: No objection.

Trial Examiner Guffey: It will be admitted as Board's Exhibit No. 5.

(Thereupon the document previously marked for identification as Board's Exhibit No. 5 was received in evidence.

Q. (By Mr. Reitman) Did you have occasion to call the company on the telephone? A. I did.

Q. When? A. I believe it was when the return receipt was returned to our office, indicating that the company had

(29)

received our letter.

Q. Was that on May 23? A. I believe so.

Q. Did you do anything else on May 23 with respect to these employees? A. I believe we filed a petition with the National Labor Relations Board.

Q. For what purpose? A. For the purpose of being certified as the bargaining agent.

Q. Now, just going back to the other matter, whom did you speak to? A. Mr. Goodfield.

Q. What time of the day was it? A. I don't think I could remember that.

Q. Did Mr. Goodfield identify himself? A. Yes.

Q. How did he identify himself? A. I asked for Mr. Goodfield, and I am familiar with his voice. He is an officer in another company with which we hold a union contract.

Q. What was the conversation with Mr. Goodfield? A. I informed Mr. Goodfield that we represented the majority of his employees, and we desired to negotiate a contract with the firm, and when could we sit down and have a con-

(30)

ference with this firm, and Mr. Goodfield informed me that while he was one of the officials of Medo, the matter was

entirely out of his hands because Mr. Niemeyer was the nominal head of the firm, and president, I think he said. 49

Mr. Friedman: I cannot hear you. You said Mr. Goodfield said that Mr. Niemeyer is the nominal head of the firm?

The Witness: That is right. Mr. Niemeyer was out of town, and until he returned the company could not do anything.

Trial Examiner Guffey: What was the date of that telephone conversation?

Q. (By Mr. Reitman) When was this telephone conversation? A. Around May 23.

Q. Was it on May 23? A. I believe it was. 50

Q. Now going back to the filing of the petition, you said that that was filed on May 23rd, too; is that correct? A. Yes.

Q. Do you recall the unit that you requested in the petition? A. I believe I do.

Q. What was the unit? A. We asked for a unit comprised of non-selling employees specifically, shipping clerks, receiving clerks, stock clerks, order pickers and errand boys.

* * * * * *

(31)

Q. (By Mr. Reitman) Are you familiar with the nature of the duties of the people in the basement? A. I am. 51

Q. Are you familiar with the duties of the people on the remaining floors occupied by the company? A. I am.

Q. Is there any difference between the type of work performed by the people in the basement and the type of work performed by the people on the main floor?

Mr. Friedman: I will object to that question.

Trial Examiner Guffey: Sustained. Ask him what they do.

52 Q. (By Mr Reitman) What do these various people do? A. The people in the basement perform the work of picking out orders and shipping them out, and they re-

(32)

ceive merchandise, they pick merchandise out of stock, and they have delivery boys who take orders throughout the city to various concerns, and they also have truck drivers' helpers performing in the same capacity. All the work downstairs that I know of deals mostly with, I would say, more or less a wholesale business, whereas the people upstairs, that is, the sales clerks who work on the main floor, are re-

53 tail sales people. Their job is different. It is a white-collar job, with salaries, and there is a tremendous differential between the salaries paid to people downstairs and the people upstairs.

Mr. Friedman: What is that, Mr. Stoltman?.

The Witness: There is a great deal of difference in the salaries.

Mr. Friedman: I object to that statement and move that it be stricken. If he knows the salaries, let him state what they are. The payroll is here, and it can be shown.

Trial Examiner Guffey: Sustained.

54 Q. (By Mr. Reitman) Do you know what the salaries in the basement are? A. Generally, yes.

Mr. Friedman: To save time, I have given you the payroll records, and why ask this witness what they are? The salaries are here.

Trial Examiner Guffey: Mr. Friedman, we are trying to get a description of the appropriate unit

(33)

here, and the nature of the work done by the employees claimed to be in the unit, that is, that the union claims to be appropriate.

Don't be alarmed that the witness' testimony that certain employees make more money than other employees is going to be considered authoritative over a payroll. 55

I will ask Mr. Reitman, however, to try to avoid such questions where he may have more authoritative evidence on it. We are wasting an awful lot of time with objections which, while technically speaking they may be well taken, however, I think they are not helpful to your position, and we are consuming too much time in talking about them.

Mr. Friedman: The only reason I raised it was as a time saver. I think since we have submitted them, they can be furnished as an exhibit. If they want to repeat it through this witness, they can do it, but it would save time if they get up a list of the payroll and introduce it here this afternoon. 56

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(34)

Q. (By Mr. Reitman) Are the employees downstairs receiving more or less than the salaries of the people upstairs generally? A. Less.

Q. Do you know the hours that the people in the basement are obliged to work? A. The people in the basement, I believe, are on a 40-hour week, and in connection with that I believe they informed me that when the Wage and Hour Law was enacted, they were placed under the 40-hour week, whereas the people upstairs in the store were not on a 40-hour week. 57

Q. Are the people upstairs working under the Fair Labor Standards Act? A. According to the men downstairs, they were not.

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(35)

58 Q. (By Mr. Reitman) What do the people upstairs do? A. The people upstairs perform what is ordinarily known as over-the-counter business. Retail customers come in to buy, who are not generally connected with the photographic trade, but would be the people more dealing with amateur photography. Occasionally someone from the trade might come into the upstairs division of the store.

Q. Does their work require any special skill? A. Yes.

Q. What skill? A. They would have to have a fairly good working knowledge of the various photographic products that they were attempting to sell.

59 Q. Does the work of the people downstairs require any particular skill? A. I don't think so.

Q. Now, as the result of the filing of this petition, did you attend a conference at the Labor Board on June 4? A. I did.

Q. Who was present? A. At that conference there was Mr. Schatzow of the National Labor Relations Board—

(36)

Q. Will you keep your voice up, please? A. I will try to. There was Mr. Schatzow from the National Labor Relations Board; there was Mr. Friedman representing the

60 company and Mr. Niemeyer also representing the company; Mr. Hiller from our organization and myself.

Q. Were there any employees present? A. None.

Q. What took place at that conference? A. I believe Mr. Schatzow opened up the conference and informed the company that a petition had been filed by the union, and I think he showed Mr. Friedman a copy of the petition, if he had not already received one. I don't recollect. And he asked both Mr. Niemeyer and Mr. Friedman what they wanted to do on the petition. Mr. Friedman, I believe, did

most of the talking for the company, and said that the company could not entertain such a petition; they did not feel that the unit as was requested by the union was a proper unit, and they would prefer, instead of an overall unit comprising all of the employees of Medo Photo Supply, the downstairs department, the retail sales people, the office workers and the outside salesmen. 61

Q. Did you have anything to say to Mr. Friedman at that time? A. I did. I told Mr. Friedman that I knew of several similar cases to ours, where units such as ours had been upheld over at the State Board, and I believe the National

(37)

Board, and that we were interested in representing the other employees of the store. And Mr. Friedman took the position that while I might be right—as a matter of fact, he himself did know of similar instances—he believed that the trend of the times—that particular phraseology sticks in my mind—he believed that the trend of the times was different, and the Board was more inclined to favor an overall unit, and that he felt that only a formal hearing could solve the problem. 62

Q. This conversation took place in the presence of all the parties you mentioned that attended the conference? A. It did. 63

Q. Did you have a conversation with Mr. Friedman alone on June 4? A. I did.

Q. Where? A. It was in the offices of the National Labor Relations Board, directly outside of Mr. Schatzow's office.

Q. What was the substance of your conversation with Mr. Friedman then? A. I asked Mr. Friedman if there was not something which we could do to avoid a long delay of going to a formal hearing, and Mr. Friedman said that he

64 thought he could arrange a conference, and that we would all sit down together and strive to agree on whether or not

(38)

our unit was a proper one or no, and we set a date for that meeting.

Q. Was that the sole purpose for that meeting? A. Well, I believe there was a two-fold purpose.

Q. Not what your belief is, but what were you told? A. Well, I was told by Mr. Friedman, I believe, that if we could work out a unit we would probably—just a moment. I want to get my best recollection on this. If we could work out a

65 unit, the firm would consent to us being certified, and, thereupon, we would automatically go into the process of bargaining.

Q. When was this meeting called for? A. I believe it was a day or two after.

Q. Was it Thursday, June 5? A. I think that is the date, yes, sir.

Q. Where did you meet? A. We met in the offices of the law firm of Seligsberg and Lewis.

Q. Who was present? A. At that conference there was Mr. Seligsberg, Mr. Friedman of the law firm, Mr. Hoppin,

66 Mr. Niemeyer, and Mr. Goodfield of Medo Photo Supply, myself, and Mr. Hiller, from the union.

Q. What took place at the conference? A. Mr. Seligsberg, I believe, opened up the meeting and said that insofar as we were the fellows who had filed the petition, what

(39)

did we want to do? I told him that we were anxious to be certified, and certified for the unit that we had requested in our petition. Mr. Seligsberg then asked me if he could see a copy of our contract. I asked him the reason why he

wanted to see a copy of our contract. He said, "Well, we would never consent to your being certified before having seen a copy of the contract." I didn't quite get his reasoning behind that, and I asked him to explain further, and he said, "Well, it was very simple"; he said, the firm was certainly not going to buy a pig in a poke—that was his exact language—by consenting to the union being certified, and then finding out what they had to bargain for. He would choose instead to reverse the procedure. We asked him why they had made all the objections to the particular unit which we had requested at the Board, and why were they now, if they saw a copy of the contract, willing to have us certified? He said, "I believe you can understand that." I said, "I don't think I can." Mr. Seligsberg said, "Well, we will see that you give us an easy enough contract, and the contract is not too tough, and we can get along with you, except there is no sense in creating an issue." He said, "However, if you are too tough, we will have to employ all the means we know how, and we will have to fight you through the Board and try to straighten the thing out." I said I didn't think that that was exactly ethical, and if the firm had ethics, which they maintained they had, about what constituted a proper bargaining unit the day before or two days before, they had certainly changed them. Mr. Seligsberg replied to that. He said, "You should understand those things, Stoltman. It is not a question of ethics but it is a question of being practical."

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Q. Did you show him a copy of your contract? A. Yes, I felt that we had no other alternative, and we were naturally anxious to avoid any other complications.

Mr. Friedman: I move to strike out the witness' answer.

70 Trial Examiner Guffey: May I hear the answer, please, Mr. Reporter?

(Answer read.)

Trial Examiner Guffey: All of the answer after the word "Yes" may be stricken.

Q. (By Mr. Reitman) What was the purpose of showing him the contract?

Mr. Friedman: I object to that question.

Mr. Reitman: I will withdraw it and reframe it.

Q. (By Mr. Reitman) Did you have an understanding

(41)

71 with Mr. Seligsberg prior to showing him the contract?

Mr. Friedman: I object to that. The witness has already testified to the substance of the conversation which he had with Mr. Seligsberg at that conference, and I do not know the purpose of any further examination on that subject.

Trial Examiner Guffey: Overruled.

Q. (By Mr. Reitman) Will you answer? A. I did.

Q. What was it? A. Before I showed Mr. Seligsberg the contract, I wanted to be very clear on the matter, and I said, "Let's get this straight, now. We are to show you this

72 contract, and in your own words, if the contract"—I will have to go back a moment. He had said that the firm would consent to the union being certified, and further consent to bargaining with us, if they felt that our contract constituted a reasonable basis for negotiations. So before showing him the contract, I repeated and said, "Let's get this straight. Let's get all our facts in order. We are to show you this contract. If the contract in your mind, or your collective minds here, rather, is a reasonable basis for negotiations, you will consent to our immediately being certified for

(42)

the unit we requested, either on a comparison of cards or through the medium of an election, and then we will go right into the process of bargaining?" He said, "Yes, that is right". 73

Q. What did you do after you submitted a copy of the contract? A. I handed Mr. Seligsberg the contract, and he then asked myself and Mr. Hiller to step out of the room for a little while, while he and the officers of the firm glanced over the contract, and we did so.

Q. Did he call you back? A. He did.

Q. Did Mr. Seligsberg say anything to you when he called you back? A. He did. He said— I don't remember the exact words now—that the contract could have been a tougher one, but he couldn't see exactly how. I believe he told us a little anecdote to bring it out. 74

Q. Let us not go into anecdotes. We want the facts. A. I am only bringing that up because he used that as an analogy to show how tough our contract was. He said, "However, I believe that the contract is a basis for negotiations, and we can arrive at an agreement."

Q. Did you ask him anything about certification? A. I did. I asked him, "Now, what shall we do about ar-

(43) 75

ranging for the certification? How would you like to go about it?" And he seemed a little mystified at that, and he said, "Oh, there is no sense in us going through all that." He said, "After all, you have got all you wanted, and we are going to negotiate with you." He said, "What is the sense of going through a certification now?" I said, "I think our people would feel very much better off with an official Labor Board certification; and, item No. 2, that was the specific understanding that we had, and if we are to ne-

76 gotiate a contract we want to negotiate in good faith, and we want to be negotiating in good faith with each other. "As long as we have already got an understanding or agreement, let us live up to the agreement, so that we will know for all time while we are under contractual relations one party won't be trying to outdo the other." Mr. Seligsberg said, "Well, I do not think it is so important. I think you are making a mountain out of a molehill." He said, "Besides, I think you misunderstood me. I don't think we agreed to that." I believe I became a little vehement and said that that was the exact understanding that we had, and

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I saw no reason for the firm backing down, unless they had some ulterior motive. He said, "Well, Stoltman, let us not create any situations. Let us sit down and negotiate. That is the primary thing you are after," he said.

Q. Was an appointment made? A. Yes, sir.

Q. When? A. For the following Monday, I believe.

Q. Was that June 9? A. If that is the Monday after.

Q. You met on Thursday, the 5th; is that right? A. Yes, and then Monday would be June 9.

Q. At what time was the appointment? A. I think 3 or 3:30 in the afternoon.

78 Q. Where were you supposed to meet? A. We were supposed to meet at the offices of the Medo Photo Supply Company on West 47th Street.

Q. On Monday morning, June 9, did you receive a telephone call from Mr. Friedman? A. I did.

Q. What did Mr. Friedman say? A. Mr. Friedman said —I forget the exact reason given, but for some reason or other, the conference would have to be changed, to be held

(45)

in the offices of the law firm rather than the Medo Photo Supply, and he asked me— 79

Q. Did you request permission to speak with any people prior to this conference? A. I asked Mr. Friedman would it be all right if we could get permission to bring our committee with us, and have them present at the conference. Mr. Friedman said that he would get in touch with the firm and arrange for us to meet with the people at the plant, and speak to them and bring them down to the conference with us.

Q. Did you go to the plant that afternoon? A. I did. 80

Q. About what time? A. About half past two.

Q. Did you go inside? A. I went inside, and I believe I ran into Mr. Hoppin, and I asked Mr. Hoppin whether Mr. Friedman had spoken to him with regard to arranging for us to take all the men down to the conference with us, and Mr. Hoppin—

Trial Examiner Guffey: Who is Mr. Hoppin?

The Witness: Mr. Hoppin is one of the officials of the firm. I believe he is sitting behind the table there. (Indicating.)

Q. (By Mr. Reitman) Is he the gentleman alongside 81

(46)

Mr. Friedman? A. Yes, sir.

Mr. Friedman: That is right.

Mr. Reitman: Is it so stipulated?

Mr. Friedman: Yes, sir.

The Witness: Mr. Hoppin said it was complete news to him, and he had not heard anything about it, and I was very much surprised.

Q. (By Mr. Reitman) Did you agree to do anything? A. Yes.

82 Q. What did you agree to do? A. He said he would call up Mr. Friedman and find out what it was all about, and then he would arrange for the men to be given time off to go down with us.

Q. What did you do then? A. I then went down to the basement and inquired for the men.

Q. Which men? A. The three committee members.

Q. Who were on the committee? A. Angelo Seminara, Bill Goshgarian and Gerard Munrett.

Q. Was there another person on that committee? A. Not to my knowledge.

83 Q. Was Ray Bruchbacher a member of the committee? A. No, he was not; I don't think.

Q. All right. Did you speak with these people down-

(47)

stairs? A. I did, and immediately we began to notice that there was something wrong.

Mr. Friedman: I move to strike out that statement.

Q. (By Mr. Reitman) Mr. Stoltman, we do not want your conclusions.

Trial Examiner Guffey: Motion granted.

84 Q. (By Mr. Reitman) Mr. Stoltman, please give us the facts. A. That is a fact.

Q. Did you speak with these people? A. I did speak with these people.

Q. What did you say? A. I asked them, had they been informed that it was all right for them to leave their job and come to the conference with us.

Q. Did they answer you? A. They did.

Q. What did they say?

Mr. Friedman: Can you identify who specifically? 85

The Witness: Yes.

Mr. Friedman: All right.

Q. (By Mr. Reitman) Who answered you? A. Angelo Seminara.

Q. What did he say? A. He said he had not been informed.

(48)

Q. Did you say anything further to them? A. I said I could not understand it. I had just spoken to Mr. Hoppin upstairs, and that he had better check upstairs and find out what it was all about. I told him that they didn't have to worry, that we already had permission from Mr. Hoppin, and he said that it would be arranged, and probably the call had not been placed through, and why did they not put their hats and coats on and come with us. They refused to do so, and were very frightened and very evasive. 86

Mr. Friedman: I move to strike that out as improper.

Trial Examiner Guffey: Motion granted.

The Witness: I went upstairs—

Trial Examiner Guffey: Mr. Stoltman, let me ask you to state what you hear and what you see, and not characterize what you hear or what you see in any way. 87

The Witness: I do not think it is a characterization, but it is something which I have seen.

Trial Examiner Guffey: Tell us what you see and what you hear.

Q. (By Mr. Reitman) Did these men eventually go with you to the attorney's office? A. Yes.

88 Q. How long a time elapsed between the time that you first spoke with them and the time that they went there?

(49)

A. It must have been close to an hour.

Q. How many men went down with you? A. I believe there were four.

Q. Who were the four? A. The three I have already previously mentioned and Ray Bruchbacher.

Q. How did you go down to the attorney's office? A. By taxi.

Q. Did you have any conversation with these four peo-
89 ple in the cab? A. I did.

Q. Was anyone the spokesman for them? A. I don't think so.

Q. What was your conversation, and identify the conversation as to who made the statements to you. A. I asked them what was the reason for their peculiar attitude, and they all looked at each other, and one or two of them shrugged their shoulders, and said that there was no particular reason, and I asked them if something had happened, and I do not think I can identify any particular individuals. They told me that they no longer needed the
90 union to represent them. This came very much as a surprise, and I inquired why.

Mr. Friedman: I move to strike the last part.

(50)

Mr. Reitman: I consent that it shall be stricken.

Mr. Examiner, will you please direct the witness to give us the facts and the facts alone, and to leave his own personal reflections out of his testimony? I know you have asked him to do that already.

Q. (By Mr. Reitman) Please just give us the facts,

without your personal ideas or personal observations. A. 91
I asked for the reason why, and I didn't get very direct replies.

Q. Was anything said in reply? A. There was some statement made to the effect that they were going to get wage increases, and I asked them what that had to do with the union, and didn't they feel more secure to have their wage increase with a union contract, and one would shrug his shoulders and say, "What can you do? You can't fight the firm. They are too big."

Q. Who was it who said that? A. That is something I couldn't say specifically. 92

Q. When you got to the attorney's office, who was present? A. The same people who were present at the prior conference.

Q. Was that Mr. Friedman, Mr. Niemeyer, Mr. Goodfield and Mr. Hoppin? A. Yes.

Q. Representing the company? A. Yes, sir.

(51)

Q. And you and Mr. Hiller representing the union? A. Yes.

Q. And this committee of employees? A. That is right.

Q. What happened at that conference? Who talked 93
first, and what did he say? A. I believe Mr. Seligsberg presided, and he opened the conference and asked "Well, what are we here for today?" I told Mr. Seligsberg, I said, "We are here to negotiate an agreement as per our appointment." Mr. Seligsberg said, "Well, I understand there has been a little change in the picture. I don't see how we can make a contract with you. I understand that you no longer represent a majority of the men," and I told Mr. Seligsberg that he certainly received information

94 fast, and I said, "I don't think that that is the issue. We believe that we still represent the men and we still desire to negotiate a contract."

Q. Did Mr. Seligsberg suggest any solution of the problem? A. He said he couldn't possibly negotiate a contract with us, but if we could prove by an election that we represented a majority of the men, he would see what could be done. I then asked him—

Q. Did he mention the unit for the election? A. Yes.

(52)

Q. What unit did he mention? A. He mentioned the
95 self-same unit which we had asked for in the petition.

Q. Did he agree to consent to the election? A. He agreed to consent to the election.

Q. Did anything further happen? A. I then asked him why he was now willing to agree to a unit, or to an election on a unit which he previously maintained was improper, and he laughed and he said, "It is very easy." He said, "I am not worrying about the outcome of the election right now."

Q. Did anything else happen at that conference? A. That is about all.

96 Trial Examiner Guffey: Let me ask you this: Will you state whether or not the unit which the union alleged in its petition for certification to be the appropriate unit is the same unit as alleged in the Board's complaint to be the appropriate unit?

Mr. Reitman: In substance, it is. I might say that the unit alleged in the Board's complaint is drafted a little more lawyer-like.

Trial Examiner Guffey: Do you have a copy of the petition?

Mr. Reitman: I will get a copy of the petition and offer it later. 97

(53)

That is all.

Trial Examiner Guffey: All right.

CROSS EXAMINATION:

Q. (By Mr. Friedman) Mr. Stoltman, during this period in May and June, you were in communication with Mr. Schatzow, the Examiner for the National Labor Relations Board, were you not? A. I don't understand what you mean by "communication."

Q. Did you see him? A. Yes. 98

Q. You filed your application with him, didn't you? A. Yes.

Q. For certification as the bargaining unit? A. Yes.

Q. Didn't you know that the hearings were postponed from time to time to determine the bargaining unit proper for bargaining in this particular company? A. I believe you will have to be more specific.

Q. Now, on June 3rd or June 4th, when you say you attended a conference before Mr. Schatzow, was not an adjourned date fixed to determine on whether a hearing should be held, to ascertain the proper bargaining unit? A. There was an adjourned date, but I don't believe there was any specific agreement made for what the adjournment should 99

(54)

be for. I believe you and I both informed Mr. Schatzow that we were going to meet together, and for which I have previously stated, or for what purpose I have previously stated, and he then adjourned the thing, the conference.

Q. Do you not know that even after this conference to

100 which you testified on June 9, Mr. Schatzow communicated with me about a hearing to determine the proper bargaining unit? A. On June 9?

Q. After June 9. A. After June 9?

Q. Yes, sir. A. I don't recollect now, Mr. Friedman.

Mr. Friedman: Have you any objection to my introducing in evidence a letter from Mr. Schatzow to me, dated June 10, 1941, Mr. Reitman?

Mr. Reitman: I don't know what materiality this letter has.

101 Mr. Friedman: The letter is material, in that it shows that negotiations were in progress for a hearing to ascertain the proper collective bargaining unit, and on June 10 Mr. Schatzow wrote me and sent me a question on interstate commerce, to have me fill out in connection with such a hearing, to determine the proper bargaining unit.

That contradicts his testimony, I think, that we had consented in the hearing on June 9 to an election

(55)

102 of the employees in this particular department of the employer. It was on the following date that we had a communication from the National Labor Relations Board, that is, the following day, with respect to a hearing to determine what was the appropriate bargaining unit, because it was our contention that the employees of the entire shop, which is a comparatively small place of business, was the correct bargaining unit, or the proper bargaining unit, rather than these employes, and it is proof of that fact from the National Labor Relations Board.

If you dispute it, all right, but there is no question about it. 103

Mr. Reitman: I do not know what it is for.

Mr. Friedman: The only thing—

Trial Examiner Guffey: Just a minute, gentlemen.

Mr. Friedman: I offer the letter in evidence.

Mr. Reitman: I object to the letter.

Trial Examiner Guffey: Will you state very briefly the purpose of your offer, Mr. Friedman?

Mr. Friedman: On June 3—

Trial Examiner Guffey: Don't tell me what is in the letter. 104

Mr. Friedman: I want to state what led up to the purpose of the letter.

A conference was held at the National Labor Re-

(56)

lations Board on June 3, at the request of Mr. Schatzow, to determine the proper bargaining unit for this employer. The hearing was adjourned, and in connection with the adjourned date of the hearing, on the sole question of the proper collective bargaining unit, I received a letter from Mr. Schatzow dated June 10, requesting me to fill out a questionnaire on interstate commerce. 105

The purpose of the letter is to show that on June 10 we were still in communication with the Board, and negotiating to arrange a hearing to ascertain the proper bargaining agency for this employer, and it refutes this witness' testimony that the employer had consented on June 9 to acknowledge this particular unit to be a proper bargaining unit for collective bargaining.

106 Trial Examiner Guffey: It will be admitted as Respondent's Exhibit No. 1.

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 1 and was received in evidence.)

Mr. Reitman: Do you want to offer Mr. Schatzow's answer to you?

Mr. Friedman: This is the letter—

Mr. Reitman: Do you want your answer to Mr. Schatzow, so that we will get the whole picture?

Mr. Friedman: No. You can put that in, if you
107 want to.

Q. (By Mr. Friedman) Mr. Stoltman, when you first

(57)

started to attempt to procure members for your union from this employer, you said you issued written circulars? A. Yes.

* * * * *

Q. These circulars which you claim you handed out, you gave them to all the employees, didn't you? Yes or no, Mr. Stoltman? A. Everybody who came out of that particular building.

108 Q. And they were addressed to all the employees of Medo, were they not, Mr. Stoltman? A. They may have been, yes.

Q. And your drive was to unionize all the employees of

(58)

Medo, when you started, was it not, Mr. Stoltman? A. Not necessarily.

Q. You handed out the literature to all the employees, didn't you? A. Yes.

Q. And your literature was addressed to all the em- 109
ployees? A. Yes.

Q. Do you know how many employees there are at Medo? A. No.

Q. Do you know how many places of business Medo has? A. I believe they have only one.

Q. Haven't you any idea how many employees there are? A. Exactly, no.

Q. Approximately? A. It may be approximately 60. I don't know.

Q. A total of 60 employees? A. That is just a guess.

Q. And of those there are 25 or 30 working in the ship- 110
ping, order and receiving department? Is that right? A. Approximately, I suppose so, yes, sir.

Q. And the others are employed as salesmen in the store, in the office, and some outside salesmen; is that right? A. That is right.

Q. That is the entire unit? A. Yes, sir.

(59)

Q. When you attended the conference on June 3 or June 4, to which you testified, you said that you and I had a discussion outside the conference room; is that right? A. That is right.

Q. Is it not a fact that at that conference I insisted that 111
the proper bargaining unit was all the employees in the plant? A. You may have.

Trial Examiner Guffey: Is this the conference of June 5?

Mr. Friedman: This is the conference of June 4.

Q. (By Mr. Friedman) Is that right? A. June 4.

112 Q. It was the conference at the National Labor Relations Board? A. You may have, Mr. Friedman.

Q. Don't you remember that, Mr. Stoltman? A. I remember that partially, both you and I repeated our contentions.

Q. I am asking you whether you don't now remember that— A. I honestly don't remember. That is why I said that you may have. I couldn't honestly say yes or no.

Q. So that you don't remember what I said at that conference about the appropriate bargaining unit for Medo; do you? A. Are you referring to the one before Mr.

113 (60)

Schatzow or outside?

Q. Before Mr. Schatzow. A. Before Mr. Schatzow?

Q. Yes. A. Yes, I recall that.

Q. Didn't I then maintain that the proper unit was all the employees of this small business? A. You did, yes, sir.

Q. Didn't I maintain that I would want a hearing to determine what unit was the appropriate bargaining unit? A. That is right.

Q. And when I made that request didn't you ask me

114 to go out into the outer room? A. Not at that particular moment, no.

Q. But you requested me to go out into the outer room; didn't you? A. I believe I did, yes, sir.

Q. And didn't you tell me in the outer room, when we came out there, that what was I doing, asking for a hearing which would involve a delay in the determination of the bargaining unit? A. I did.

Q. And didn't you threaten that you would call a strike if I insisted on having a hearing?

Mr. Reitman: I object to that as immaterial. 115

(61)

Mr. Friedman: It is cross examination of this witness on a conversation to which he has testified.

Trial Examiner Guffey: Overruled. You may answer.

The Witness: I did not.

Q. (By Mr. Friedman) Didn't you tell me that you would call the men out on strike, if I insisted on having a hearing to determine the appropriate bargaining unit? A. I most certainly did not, Mr. Friedman.

Q. Didn't you even tell me that you would picket the 116
customers of Medo, if I did not withdraw my request for a hearing? A. I did not.

Q. You have no recollection of that conversation, have you? A. I have not.

Q. You have got a pretty good memory about some of these matters, have you not?

Mr. Reitman: I object to that as argumentative.

Trial Examiner Guffey: Sustained.

Q. (By Mr. Friedman) And don't you recall that you told me that if I don't withdraw my request, you will have the men out in a few days? A. I did not. 117

Q. Are you sure you didn't, or is it that you just don't recall? A. I am positive I did not, Mr. Friedman.

(62)

Q. Did you make any memorandum or record of that conference which we had on June 3rd or 4th, at the time? A. No.

Q. Now, at the meeting to which you testified on June 5, which you had at our office, did Mr. Seligsberg ask you to show him what evidence you had that you represented a ma-

118 jority of the employees at Medo? A. Let me think for a moment now, Mr. Friedman. I am not at all sure, but I believe he did.

Q. And didn't you refuse to show it to him? A. Yes, I think I did.

Q. Now, I think you testified that on May 23 you spoke to Mr. Goodfield on the telephone; is that correct? A. Yes.

Q. And I think your testimony was that you told him that you represented a majority of the Medo employees on that date. Is that correct? A. Yes.

Q. And you are sure that was your conversation with
119 Mr. Goodfield? A. Substantially that.

Q. There is no question in your mind about it; is there? A. No.

Q. Did I correctly repeat your conversation when I said that you told Mr. Goodfield that you represented a majority

(63)

of the Medo employees? A. No. When I said a majority of the Medo employees, I believe I said to Mr. Goodfield —I do not think we said that we represented a majority of the employees. I think we said we represented the employees.

120 Q. You didn't so testify on your direct examination, that you told that to Mr. Goodfield? A. If I did, I want to correct it, because that was not the exact phraseology that I placed it in. Now that you have pinned me down to exact phraseology, I will correct it, if you desire.

Q. Yes, correct it. Let ma know now what you said to him. A. I asked him, had he received our letter.

Q. Just with respect to whom you represented? A. Well, he said he had—

Q. I say, just confine it to what you told him about whom

you represented. A. I said, "You know, we represent the people, and when can we make an appointment to sit down and talk with you." I think that would be my nearest memory to the exact words. 121

Q. You told him, "You know that we represent the people." How did Mr. Goodfield know that you represented the people?

Mr. Reitman: I object to that as calling for a con-

(64)

clusion.

Trial Examiner Guffey: Sustained.

Q. (By Mr. Friedman) What did you mean when you told Mr. Goodfield, "You know that we represent the people?" 122

* * * * *

The Witness: That is a little difficult. I think what I said speaks for itself. If you want an explanation, all right. Mr. Goodfield had seen us organizing the people around the plant, distributing circulars, and talking to some of the boys, and he had also received the letter, and that is the reason I made the statement.

Q. (By Mr. Friedman) Had he spoken to Mr. Goodfield about this before? A. No. 123

Q. You testified as to the duties of some of the employees

(65)

of Medo. Don't you know that the employees in the shipping, receiving and order department also are engaged in the retail phase of Medo's business? A. What specifically do you mean by "retail phase of Medo's business"?

Q. I think you testified on direct examination that those employees in that particular department were engaged only

124 in the wholesale phase of the business, and I am asking you now whether they are not also engaged in the retail phase of the business? A. First of all, I didn't testify that they were engaged that way, but I said mainly in the wholesale division. Now, specifically, what do you mean by the words "engaged in the retail phase"?

Q. Tell me, Mr. Stoltman, do the employees of this department select orders and ship and deliver orders for retail customers as well as wholesale customers? A. They may.

Q. They do all the delivering, don't they, and all the
125 ordering, receiving and shipping? A. Yes.

Q. There is no distinction between wholesale and retail with respect to their duties, is there? A. On that specific job, yes.

(66)

Q. You say there is? A. Yes, sir.

Q. Am I to understand that there is a shipping, order and receiving department for the retail end of the business, apart from the order, shipping and receiving department for the wholesale? A. Shipping end?

Q. Yes. A. No. I understood from your question that
126 there would be a difference in the operation of the work.

Q. The same people do both work; is that right? A. Yes, I believe they do.

Q. Both retail and wholesale? A. Yes, sir.

Q. Now I think you testified that you got the 12 additional cards a few days after the union meeting; is that right? The meeting on May 21st, I mean. A. Yes.

Q. Do you recall when you received those cards? A. I place it at a day or two afterward, Mr. Friedman.

Q. You have no distinct recollection on that? A. My distinct recollection would be a day or two afterward.

Q. Don't you keep any records in your union as to when you received these cards? A. The cards are generally the 127

(67)

best records, and they speak for themselves, and we place them in a file, and they are always available.

Q. But you have no record of any kind in your union headquarters as to when a man signs a card, and when you received it? A. Not outside of the specific card, no.

Q. You have nothing? A. No.

Q. Let me get your testimony straight. You said at the beginning when you first started the organization drive, you were interested to organize all the employees of Medo; 128 is not that right? A. I didn't say that.

Q. Did you say that? A. I didn't say that.

Q. When you started this organization drive at Medo, did you desire to organize all the employees of Medo? A. I believe when we first started the organization drive, it was a general organization drive of all stores along the type of Medo, and we were not too familiar with the field, as an industry, having knowledge of all its operations. And we made contact with the various employees in the field, we found out that there was a wide differential in the people working in the shipping and receiving departments, 129 the one we discussed here, and the sales people, and those

(68)

people who had the lesser skilled jobs. They are more prone to being unionized than the white collared men, who were the retail salesmen.

Q. Let me ask you this question: When you started out to organize the employees of Medo, you started out to organize all the employees of Medo; didn't you? A. I think so.

130 Q. That was your goal; is that right? A. Yes.

Q. And it was after you discovered that you could not organize all the employees of Medo that you received a response, if you received any response at all, only from the employees of the shipping department, that you then requested to be the bargaining agent for those particular employees? Is not that right? A. No.

Q. Did you at any time tell the employees of Medo that you did not want to organize all the employees? A. They told me—

Q. I am asking you if you told them. Please, Mr. Stoltman, answer the question.

131 Mr. Reitman: I missed the question. Will you read it please, Mr. Reporter?

(Question read.)

(69)

The Witness: Yes.

Q. (By Mr. Friedman) You told the other employees? A. Yes.

Q. When? A. At our second meeting, I believe.

Q. When was that? A. That would be sometime after the May 21st meeting.

132 Q. When was it after the May 21st meeting? A. It might have been the day after. I don't know.

Q. Do you mean you had a second meeting on May 22? A. Yes.

Q. Who was present at the May 22nd meeting? A. All the men who had signed the cards.

Q. Tell me without looking at the cards who were present. A. I couldn't remember the 18 names.

Q. Do you mean all 18 people were present on May 22? A. There may have been one or two not there. I think

there was some discussion about one boy who was out, and 133
couldn't make it, or was working, and off or something, but most of them were there.

Q. That was on May 22? A. I believe it was, yes, sir.

Q. Is that right? A. Yes, sir.

Q. At that time all the cards had been signed that you

(70)

have introduced in evidence here? A. I am not too certain of that. I think there was a card signed after May 22nd, or two cards. I am not too sure.

Q. But the people who signed the cards after May 22nd, they were present at that meeting on May 22nd? A. If the 134
meeting was on May 22nd.

Q. Have you any records as to when the meeting was? A. Yes, I could check.

Q. Will you do that? A. Yes.

Q. Have you a record of the attendance at that meeting? A. No.

Q. And at that meeting you told the employees who were present that you were going to organize only that department? A. Yes.

Q. But that was after you had spent a couple of weeks in your organizational drive to organize the Medo em- 135
ployees? Is not that right? A. Yes.

Q. And it was after you had already discovered that you could not obtain any support for your union activities from the other employees? Is not that right? A. No.

Q. Hadn't you tried to get the other employees to join

(71)

the union? A. Only through the medium of circular distribution. There wasn't any—

Q. Didn't you talk to them? A. No.

136 Q. Where did you talk to these people? You told us you talked to them in front of Medo; didn't you? A. That is right.

Q. When people came out didn't you talk to anybody who came out, who was an employee? A. The only way I could identify the employees, not knowing them, was when they came out of the store, the retail salespeople in the store were all white collared people, and I wouldn't know them from a customer, and the men working in the basement generally worked in regular working clothes, and it was fairly easy to identify them.

137 Q. Then you spoke to no employee of Medo at any time during the organizational drive except the employees in the shipping department? A. Oh, I might have spoken to some others, Mr. Friedman.

Q. As a matter of fact, you know that you spoke to others, and asked them to join the union, don't you, Mr. Stoltman? A. I wouldn't be too sure, Mr. Friedman.

Q. But you wouldn't say that you didn't, would you? A. No, I wouldn't say that.

Q. Now at that conference which you had at our office on June 5 with Mr. Seligsberg, didn't Mr. Seligsberg, when

138 (72)

he asked you to show him proof of the fact that you represented a majority, tell you that if you proved that you represented a majority of the employees, assuming that that was the proper bargaining agency, that the employer would bargain with you? A. Yes.

Trial Examiner Guffey: May I have the last question and answer, please, Mr. Reporter?

(Question and answer read.)

Q. (By Mr. Friedman) And you refused to show him

at that time—I will withdraw that. That has already been asked and answered. Did you have any conferences with Mr. Schatzow after the meeting of June 9? A. Yes, I believe I did. 139

Q. Did Mr. Schatzow tell you that he was in communication with me about fixing a hearing to determine the proper collective bargaining unit?

Mr. Reitman: I object to that unless the time is fixed.

Mr. Friedman: He can state the time.

Trial Examiner Guffey: Objection overruled.

The Witness: The only conference that I recall with Mr. Schatzow, I believe we filed a petition, the 140

(73)

petition which the Board is entertaining now, and I believe that the only conversation I had with Mr. Schatzow was relative to the charge, the one which we have filed with the Board, and if there was a conference with Mr. Schatzow with reference to the petition, I can't remember it. To the best of my recollection there was no conference between Mr. Schatzow and myself about further hearing on the petition which we had filed.

Later we were asked to withdraw our petition. 141

Q. (By Mr. Friedman) Do you mean by Mr. Schatzow? A. By the Board.

* * * * *

(74)

Trial Examiner Guffey: You made some reference to outside selling employes. Will you tell me what the duties of such people are?

The Witness: I am not too familiar with the

142 duties of the outside selling people. I believe it is just like any ordinary salesman, a person who goes out and solicits business for a company on the outside.

Trial Examiner Guffey: If you know, is the type of work done by the people on what you call the upstairs floor,—is that the street level of this business establishment?

The Witness: Yes.

Trial Examiner Guffey: And its retail store?

The Witness: Yes.

143 Trial Examiner Guffey: Are the people who work

(75)

in that part of the business engaged in the same duties as retail clerks, in the usual retail store, waiting on customers that come in?

The Witness: Waiting on them over the counter, yes.

Trial Examiner Guffey: How do those employees enter and leave the business establishment?

The Witness: I wouldn't know the exact entrance that they use.

144 Trial Examiner Guffey: Do you know whether there is more than one entrance to the building?

The Witness: I believe there is.

Trial Examiner Guffey: How large a building is this? How large a building is this where the Respondent conducts its business?

The Witness: They are in a large building, and they occupy several stories in the building. Now that you ask me, I recall now from our circular distribution that they entered directly into the store proper.

Mr. Reitman: What about the other employees? 145
Trial Examiner Guffey: Just a minute.
This is from the street entrance?
The Witness: Yes.
Trial Examiner Guffey: Where do the employees who work in the basement enter and leave the store or building?
The Witness: I have sometimes seen them come out of the basement, most of them come out of the

(76)

basement, and on very rare occasions I have seen one or two of them come out of the store itself. 146
Trial Examiner Guffey: Did you actually participate in the circulation of these leaflets?
The Witness: I did.
Trial Examiner Guffey: At what entrance and at what exit were you stationed when you were passing out these leaflets to the employees?
The Witness: Well, generally we wouldn't—the exits or entrances are grouped so closely together that we generally stood in the middle and tried to cover both entrances in that manner and the exits as well.
Trial Examiner Guffey: Then both of these 147
exits, the one for the basement employees and the one for the retail store employees, are close together?
The Witness: Fairly close together.
Trial Examiner Guffey: What do you mean by "fairly close"?
The Witness: Oh, in actual feet, I do not think—this is just an estimate, but 15 feet, possibly. It may be a little more or it may be a little less.

148 Trial Examiner Guffey: When you were passing out these leaflets, will you state whether or not you said anything to the people who took the leaflets?

(77)

The Witness: Sometimes I did and sometimes I did not, no.

Trial Examiner Guffey: State whether or not you gave one of these leaflets to everyone who came out of Respondent's establishment, or whether or not you gave them only to persons you thought were
149 employees.

The Witness: Well, I knew that we gave out a great deal more leaflets than the people working there, because sometimes we would get customers mixed up and supervisory people in the firm, but what we generally thought were employees we made the circulation to. We had no exact knowledge or way of knowing whether they were employees.

Trial Examiner Guffey: In passing out these circulars, did you make any attempt to distinguish between the basement employees and the upstairs
150 employees?

The Witness: I don't think we did.

Trial Examiner Guffey: You said that the employees in the basement are chiefly engaged in the wholesale trade but to some extent also in the retail trade.

Do any customers of the Respondent ever go down into the basement to buy things, if you know?

The Witness: To my knowledge and from the information which I received from the men, never.

Trial Examiner Guffey: Do the basement employees wait on customers face to face, or do they 151
(78)
fill orders which have been received, either by telephone or by letter?

The Witness: They fill orders.

Trial Examiner Guffey: In addition to filling orders, they also take care of the sending out and shipping of orders?

The Witness: Yes.

Trial Examiner Guffey: And that is where the merchandise of the Respondent is received, the incoming merchandise? 152

The Witness: Yes.

Trial Examiner Guffey: Will you state whether or not the union received any letter or any answer from Respondent to the union's letter of May 22, 1941, in which the union asked for a bargaining conference?

The Witness: I do not think we received a reply.

Trial Examiner Guffey: In relation to May 22nd, when was it that you called the Respondent, Mr. Goodfield, on the phone?

The Witness: I believe it was the 23rd. The best way of fixing that date would be by seeing what day we received the return receipt back. 153

Mr. Reitman: Here they are.

(Handing documents to Trial Examiner.)

Trial Examiner Guffey: What did you say to Mr. Goodfield during that conversation? I would like to have it from beginning to end.

154 (79)

The Witness: I first asked for Mr. Goodfield, and I got him on the wire, and I identified myself and made sure I was speaking to him, but I recognized his voice anyway, and I said, "I suppose you know that we represent the people, and I see that you have received a letter. I would like to know when we can sit down and talk to you people."

That may not be the exact words, but they are my best recollection of it, and close to them.

155 Trial Examiner Guffey: What did Mr. Goodfield say?

The Witness: Mr. Goodfield told me that, while he was one of the officers of the firm, he didn't handle things of that sort, and that Mr. Niemeyer, who is the president of the firm, was away, and until he came back, that the firm could not very well do anything.

I believe I said to him, "Well, is there anybody else who can handle this thing?"

And he said, "No, we could not do anything without Mr. Niemeyer", and I said, "All right", and

156 hung up.

Trial Examiner Guffey: Was anything said about when Mr. Niemeyer would return?

The Witness: Oh, yes, he said he was returning very shortly, a week or so, or two weeks.

Trial Examiner Guffey: Was anything else said by Mr. Goodfield at that time?

(80)

The Witness: I don't believe so.

Trial Examiner Guffey: What was the next

thing which you did after the conversation with Mr. Goodfield? 157

The Witness: What do you mean?

Trial Examiner Guffey: With respect to an attempt to negotiate?

The Witness: I believe we checked with the employees, and we found out that Mr. Niemeyer was actually out of town, and decided that insofar as we had filed a petition with the Board, and we were informed according to the procedure that the Board would hold a hearing on the petition within a week, we decided to let it go until then.

Trial Examiner Guffey: When did you file this petition? 158

The Witness: Simultaneously, or the same date that we sent the letter to the firm.

Trial Examiner Guffey: The same day that you sent the letter, in evidence as Board's Exhibit No. 5?

The Witness: Yes.

Trial Examiner Guffey: After you checked with the employees and found out that Mr. Niemeyer was out of town, then what was the next thing you did?

The Witness: We didn't do anything until the conference. 159

Trial Examiner Guffey: Then the next thing which happened was the conference at the Board's office on June 4, with respect to the petition for certification?

(81)

The Witness: Yes, sir.

Trial Examiner Guffey: At the conference on

160 June 5, which was held in the office of Respondent's attorneys, you have testified that one of the attorneys asked the union what evidence they had of majority representation?

The Witness: Yes, sir.

Trial Examiner Guffey: Tell me just how that discussion came up? Who started the discussion on the point, and tell us what was said?

The Witness: I believe Mr. Seligsberg started the discussion.

He said, "I suppose you have some proof of what
161 you claim."

I told him "Yes".

Trial Examiner Guffey: Then what did he say?

The Witness: I beg your pardon?

Trial Examiner Guffey: Then what did he say?

The Witness: He then asked me if we would like to show him the cards, and I told him I didn't think that he was the proper party to see the cards.

I said, "I certainly have no objection to showing them to a third party, such as a Board Examiner, for comparison with the payroll signatures."

162 And Mr. Seligsberg laughed and said that after all we should not distrust him.

(82)

I said, "We would feel safer that way."

He said, "Well, we don't really doubt, and I am sure you have the people, and it is just a formality I have to go through with to assure my client," and I think the matter was dropped there.

Oh, yes, in line with that, he asked me specifically how many cards we had out of the group that we

claimed to represent, and I told him out of the entire group of 20 we had 18 signed cards. 163

Trial Examiner Guffey: At what point of the conversation did that come in?

The Witness: I could not place the exact point in the conversation.

Trial Examiner Guffey: Have you told me everything now which happened at the June 5 conference?

The Witness: I believe I have.

Trial Examiner Guffey: You testified—and correct me if I am wrong—I think you testified on cross examination by Mr. Friedman, that Respondent's 164 attorney, Mr. Seligsberg, stated that if you proved your majority, that he would negotiate with you. Is that right?

The Witness: At which conference do you mean?

Trial Examiner Guffey: The June 5 conference.

Mr. Friedman: That is, if he proved his majority, and assuming that that was the appropriate bargaining unit.

(83)

Trial Examiner Guffey: You testified on cross examination that Mr. Seligsberg stated that if you 165 proved majority, and that that was the proper bargaining agency, they would negotiate with you?

The Witness: Yes.

Trial Examiner Guffey: What did you say in response to that?

The Witness: I don't think I made any direct response. I might have said that, "That would be what you would have to do under the law anyway", or something of that sort.

166 Trial Examiner Guffey: Then what was he referring to when he said, "Assuming that was the appropriate unit"?

The Witness: The unit which we had requested, I believe.

Trial Examiner Guffey: Anything further?

(84)

Mr. Friedman: Yes, just a few questions.

RE-CROSS EXAMINATION:

Q. (By Mr. Friedman) I want to ask you about the conference on June 9? A. Yes, sir.

167 Q. That took place in our office, and you were present there, and the Medo representatives, and a number of the employees? A. Yes, sir.

Q. I do not think you testified on direct examination what any of these four employees said at that conference. Do you recall that? A. What they said?

Q. That is right. A. Do I recall now what they said?

Q. That is right, in substance? A. It is a little difficult, but I will try.

Q. What was it? A. I am trying to think of it now.

Q. All right. A. I mean they did so little speaking,

168 and there was so little said—

Q. Perhaps I can refresh your recollection: Didn't all four of them say that they, of their own accord, had decided that they didn't want to be members of any union? Do you remember that? A. They said something about

(85)

not wanting to be members of the union.

Q. Did they say that of their own accord? A. They may have stated it of their own accord, and they may not have.

Q. Didn't they say at that meeting that they, of their own accord, had requested the employer to give them a wage increase? A. That they didn't say. 169

Q. How? A. That they didn't say.

Q. Didn't they say that they had not been inspired by anybody to talk to the employer about the wage increase? A. At that conference, I don't think so.

Q. Did any of the employees at that conference on June 9, in your presence and in the presence of Medo representatives and of counsel, say that anybody had induced them not to join any union? A. No, they didn't say that.

Q. Did any of the employees say at that conference that anyone had persuaded them to go to the employer and talk to the employer? A. No, they didn't say that. 170

Q. Before you left the conference, didn't you again threaten to picket and boycott Medo and its customers?

(86)

Trial Examiner Guffey: What conference?

Mr. Friedman: June 9.

That is the conference to which he has been testifying.

The Witness: I believe there was some discussion that the union would employ any legal method at its command to win our organizational drive against Medo. 171

Q. (By Mr. Friedman) When the four employees told you that they voluntarily had decided that they didn't want to join your union, didn't you get up and say, "We are going to picket and boycott Medo", and with that you and Mr. Hiller left? A. I didn't say those exact words.

Q. Didn't you also state that you were going to picket

172 and boycott Medo's customers? A. No, now you refresh my mind.

Q. Let us see what it is now. A. I think I told you yourself and Mr. Seligsberg that we felt that it was because of the activities of the company, all these events that had transpired, that we detected the fine hand of the company or the company's attorneys, and we felt that the company had reneged on its agreement with us, and, as such, we were going to do everything in our power to complete our organization drive in there, and if it would necessitate us going to Medo's customers, a lot of whom are union shops, and
173 asking our own union shops to cease dealing with Medo, we would go to that extreme.

(87)

Q. Then you did state at this conference on June 9 that you would picket and boycott Medo and its customers? Is not that right? A. I didn't use those words.

Q. That was the substance of it?

Mr. Reitman: Mr. Examiner, I object at this point to this entire line of questioning as not being material in the determination of the issues.

Trial Examiner Guffey: Sustained.

174 Q. (By Mr. Friedman) Now you saw some of the employees after the conference of June 9, didn't you? A. Yes.

Q. Whom did you see? A. I met some of them on the street, or attempted to talk to them on the street.

Q. Did you talk to any of them? A. Yes.

* * * * * *

(88)

Q. (By Mr. Friedman) To whom did you speak? A. Seminara.

Q. Anybody else? A. Valentine, I believe.

Q. Anybody else? A. I attempted to speak to the whole shop, I suppose. 175

Q. I say, did you speak to anybody else and not what you attempted? A. Yes.

Q. Do you remember any other employees that you spoke to besides Seminara and Valentine? A. You and I should understand each other. You say "Speak." Do you mean

(89)

was there an actual conversation in which I did the speaking?

Q. That is right. Was there a conversation? A. I must have attempted to speak to every employee in the shop, and they wouldn't even talk to me. 176

Q. So that you had no conversations with any of the employees after June 9, is that correct? A. Most of them wouldn't talk to me.

Trial Examiner Guffey: You say "I must have attempted to speak."

What do you mean by that?

The Witness: I know there were eighteen people that I made attempts to contact, and talk to most of them on the street, and the majority of them, the names I have just mentioned, Seminara, Valentine, *et cetera*, wouldn't even deign to speak to me. Some of the fellows whose names I don't remember just said, "We don't want to be bothered. What is the use in fighting." Those are almost identically the remarks which were made in the taxicab, if you will recall. 177

Q. (By Mr. Friedman) And those are the only conversations which you had with the employees after June 9? A. Yes.

178 Q. And at no time did any of these employees tell you that they were coerced or induced by the employer not to

(90)

join the union? A. Well, I can't say for this reason—

* * * * *

(92)

CROSS EXAMINATION (Continued):

Q. (By Mr. Friedman) Mr. Stoltman, have you produced the circulars which you testified this morning you distributed amongst the employees of Medo? A. Yes, sir.

179 Q. May I see them, please? A. Yes, sir. Those are the only ones I have, Mr. Friedman.

(Handing documents to counsel).

Q. You have produced three papers. Will you tell me which of these three papers you distributed first amongst the employees? A. This (producing paper).

Q. This paper is dated May 9, 1941? A. Yes.

Q. And that represents a circular which you distributed

(93)

to all employees? A. It does.

180 Q. Now, will you please read the first two lines on that circular? A. (Reading:) "Meeting for all Medo employees."

Mr. Friedman: I submit this circular for identification.

Trial Examiner Guffey: Are you offering this?

Mr. Friedman: Just for identification.

The only thing I wanted in evidence were the two lines to which he has testified.

Trial Examiner Guffey: What is the necessity for

marking it for identification if you are not going to offer it in evidence? 181

Mr. Friedman: Merely to identify the document. That is all.

Trial Examiner Guffey: The witness has already identified it. There is no use in having it marked.

Mr. Friedman: All right.

Q. (By Mr. Friedman) This paper, of which you just read the first two lines, was a circular which you distributed to the employees of Medo, to all the employees of Medo on or about May 9, 1941. Is that correct? A. That is correct. 182

Q. Now, what is the next circular which you distributed?

(94)

A. This is the next circular (producing document).

Q. And this circular was distributed when? About May 15, 1941, the date here? A. Yes. Not the date of the circular. The circular was typed up at that time, and it was probably distributed that day or the day thereafter.

Q. Is that circular also addressed to all the employees of Medo? A. This circular is addressed to all Medo employees. 183

Q. What does the first sentence of the circular state? A. (Reading:) "Last Tuesday a meeting was held for all Medo workers."

Q. Now, when was the third circular distributed amongst all the Medo employees? A. Around the 19th day of May (producing document).

Q. 1941? A. 1941, yes.

Q. What do the first two lines of that document say? A. (Reading:) "Meeting for all Medo employees."

184 Q. Then all these three circulars to which you have testified were addressed to all the employees of Medo; is that correct? A. I believe they were, yes, sir.

Q. You know they were, don't you? A. Yes, they were.

Q. Now, have you checked your records as to the date

(95)

of the second meeting at the union headquarters, to which you testified this morning? A. Yes, sir.

Q. When was that? A. May 29.

Q. May 29? A. Yes, sir.

Q. Have you the record here that refreshed your recol-
185 lection of that date? A. Yes, sir.

Q. May I look at it? A. There is the record (producing paper).

Q. Now I think you testified that on June 9 you were advised by the employees of Medo, whom you had contacted before, that they no longer wished your union to represent them; is that correct? A. I believe that the testimony was on June 5, Mr. Friedman.

Q. Let me refresh your recollection. Was it not at the meeting held in our office on June 9? A. June 9 is correct.

186 Q. That is correct, is it not? A. Yes, sir.

Q. So that on that day the employees of Medo told you that they did not want to join the union and have you rep-

(96)

resent them? A. Their exact words were that they no longer needed a union.

Q. That is right.

* * * * *

(97) 187

RE-DIRECT EXAMINATION:

Mr. Reitman: I offer as Board's Exhibit No. 6 the circular already identified by the witness, having been distributed approximately May 9.

Any objection?

Mr. Friedman: I just don't see what its materiality is, your Honor, having this in the record.

If Mr. Reitman has any reason for introducing it in evidence, all right.

Trial Examiner Guffey: You have questioned the witness with respect to something in the document, 188
and for that reason I will admit as Board's Exhibit 6.

(The document referred to, previously marked for identification Board's Exhibit 6 was received in evidence.)

Mr. Reitman: I offer as Board's Exhibit No. 7 a circular identified by the witness as having been distributed approximately May 15.

Any objection?

Mr. Friedman: The same objection as the other 189
one.

Trial Examiner Guffey: It will be received in evidence.

(The document referred to, previously marked for identification Board's Exhibit 7 was received in evidence.)

(98)

Mr. Reitman: I offer as Board's Exhibit No. 8 the circular identified by the witness as having been distributed approximately May 19.

190 Mr. Friedman: Same objection.

Trial Examiner Guffey: It will be admitted.

(The document referred to, previously marked Board's Exhibit 8 for identification was received in evidence.)

Mr. Reitman: I offer as Board's Exhibit No. 9 the letter addressed "Dear Sir and Brother", and signed by "A. Stoltman, President," that the witness used to refresh his recollection of the meeting called for May 29.

Mr. Friedman: I object to that, Your Honor, as
191 being outside the issues involved in this hearing.

Trial Examiner Guffey: The objection is overruled.

It may be admitted as Board's Exhibit No. 9.

(The document referred to was marked Board's Exhibit No. 9 and received in evidence.)

Trial Examiner Guffey: Was Board's Exhibit No. 9 prepared by you, Mr. Stoltman?

The Witness: Yes, sir.

Trial Examiner Guffey: To whom is it addressed?

The Witness: It was a mimeographed letter and
192 was addressed to all people who had signed application cards, that we had application cards from. I ran it off on a mimeograph machine and addressed it to each one individually.

Trial Exaaminer Guffey: How were they delivered?

The Witness: By mail. They were mailed out.

Trial Examiner Guffey: Were there other employees who had signed application cards?

The Witness: Yes, sir.

Q. (By Mr. Reitman) Now, Mr. Stoltman, did you ever offer to submit proof of your majority to Mr. Seligsberg or anybody representing the company? A. I did. 193

Q. When? A. Once, at the first conference which was held at this Board.

Q. Was that June 4? A. Yes.

Q. And in what fashion did you offer to submit proof of your majority? A. I offered to show our cards. As a matter of fact, I did turn my cards over to Schatzow and offered them for comparison purposes against payroll signatures of the firm. The second time was in the office of Mr. Seligsberg at the June 5 conference. I offered to produce the cards, but only to a Labor Board Examiner. 194

* * * * *

(100)

Q. (By Mr. Reitman) You testified on cross-examination that Mr. Seligsberg told you that if you could prove your majority, and if the unit you claimed was proper, the company would bargain, is that correct? A. That is correct.

Q. When did Mr. Seligsberg say this to you?

Mr. Friedman: I object to that on the ground that it is repetitious and been gone over. I questioned about it, and I think your Honor questioned about it, and he has testified at length on that subject, and it is merely repeating the same thing that has been testified to before. 195

Trial Examiner Guffey: It is repetitious, unless you are asking these questions merely to lead up to some other evidence. Otherwise, I will ask you not to do it.

Mr. Reitman: That is the purpose.

196 (101)

Trial Examiner Guffey: Let us get down to the evidence. That has already been covered.

Q. (By Mr. Reitman) When was this statement made? A. At the June 5 conference.

Q. Was this statement made at the June 9 conference? A. The statement, the exact statement, no.

Q. Did the company indicate that it would bargain with you at any time at the June 9 conference? A. Yes.

Q. Under what circumstances?

Mr. Friedman: I object to this line of testimony
197 on the ground that it is repetitious, and I object to the form of the question as not being a proper question. The substance of the conversation at the conference on June 9 has been gone over by counsel for the Board, by your Honor and by myself in great detail, and now Mr. Reitman is merely trying to have him repeat the same testimony that he has given three times, and I object to it, and I also object to the form of the question as not being a proper question.

Mr. Reitman: My recollection is that in the wit-
198 ness' cross examination he placed the date when that statement was made by Mr. Seligsberg as June 9.

Mr. Friedman: June 5.

Mr. Reitman: Will you concede that the statement was made on June 5?

(102)

Mr. Friedman: That was the testimony.

Mr. Reitman: My notes indicate that it was made on June 9.

Trial Examiner Guffey: My notes indicate that it was made at the June 5 conference, where Seligsberg asked the witness what evidence of majority he had, and the witness refused to show it to him, and that on that same date Seligsberg told the witness that he would bargain with the union provided they proved their majority status, and assuming that the unit was as claimed. 199

Mr. Reitman: Your notes do not disclose anything about that statement having been made on June 9?

Trial Examiner Guffey: No. 200

Mr. Reitman: All right.

Q. (By Mr. Reitman) Mr. Stoltman, when you first started organizing the employees of Medo Photo, which employees did you organize?

Mr. Friedman: Now, I don't like to press these objections, but I fear that we are going over and rehashing the same ground that we did this morning. He gave a complete picture of his activity in organizing the employees, and on cross examination I went into it, and for that reason requested him to produce the circulars to show whom they attempted to induce to join the union, and I think we have covered the field fully, and it is merely wasting time, to repeat the same thing over again. 201

(103)

Mr. Reitman: I do not think it is repetitious. I think the witness indicated on cross examination that the unit named in the petition which was filed was not the unit that included the employees that the union was intending to obtain.

202 Trial Examiner Guffey: Objection overruled. Proceed.

The Witness: When we first started to organize the Medo Photo Supply Company, we started to organize all the employees. After we had made contact with the workers, we found out the wide difference in the type of work performed in the basement as against the people in the store and the office upstairs—and further than that, the people working downstairs themselves indicated to us that their demands, their type of work and their sym-

203 pathies—

. . . . . .

(104)

The Witness: They indicated to us that their sympathies, their viewpoints of the people upstairs were not the same sympathies or viewpoints which they had, and that it would be rather difficult to achieve organization, and, frankly, they would much prefer if those other people were left out, and they asked me if that could be done, and I told them that from my understanding of the Wagner Act and

204 appropriate units such a thing could be established.

. . . . . .

Mr. Friedman: May I make a motion to strike out the witness testimony on everything after his statement as to what the people indicated to him? I think the proper statement is what the substance of the conversation was, and who said it, and when it was said.

Trial Examiner Guffey: Read the answer please, Mr. Reporter.

(Answer read.)

Trial Examiner Guffey: Motion to strike denied. 205

Q. (By Mr. Reitman) Do you remember approximately

(105)

when this decision was made? A. That decision I believe was made approximately May 21.

Mr. Reitman: That is all.

RE-CROSS EXAMINATION:

Q. (By Mr. Friedman) Mr. Stoltman, who told you that he did not want the employees of Medo taken in, the employees in the shipping department, and become members of the union? A. The talk and the conversation to which 206 I referred—

Q. Please answer the question. I ask you, who told you that? A. I can't answer that question.

Trial Examiner Guffey: Just say you cannot answer it then.

Q. (By Mr. Friedman) Who told you that he didn't want all the employees of Medo to join the union, and that he wanted the union to take in employees of the shipping department only?

Mr. Reitman: I object to that as improperly quoting the witness' direct testimony. 207

Trial Examiner Guffey: Objection sustained.

Read the record again, Mr. Reporter.

(Record read.)

Q. (By Mr. Friedman) What employees in the shipping department of Medo indicated to you that they wished the employees of Medo in the other departments to be left out

(106)

of the unit?

Mr. Reitman: Mr. Examiner, I think that that

208 does not place a fair interpretation on the witness' story. The witness said that these employees stated that they would prefer that.

Trial Examiner Guffey: The record shows what he testified to.

Proceed. Objection overruled.

Q. (By Mr. Friedman) Will you answer the question please, Mr. Stoltman? A. Most of them told me that, Mr. Friedman.

Q. Who told you that exactly? A. I can't answer that, as it was told to me collectively at a meeting.

209 Q. Now, then, you have no recollection of any particular individual who told you that he preferred that you should not include the employees of Medo who were not in the shipping department in your unit; is that right? A. No one individual, no.

Mr. Friedman: That is all.

Mr. Reitman: That is all.

Trial Examiner Guffey: Where were you when these employees in the basement department or the shipping department indicated to you that they wanted the other employees excluded from the unit?

210 (107)

The Witness: That was in the union office, and it happened on two different occasions.

Trial Examiner Guffey: What were the dates of those occasions?

The Witness: May 21 and May 29.

Trial Examiner Guffey: May 21 and May what?

The Witness: 29.

Trial Examiner Guffey: Was anyone else present with you when they made these statements to you?

The Witness: Yes.

Trial Examiner Guffey: Who? 2 4

The Witness: Mr. Hiller.

Trial Examiner Guffey: Mr. Hiller?

The Witness: That is right, and, if I am not mistaken, our office secretary, Mr. Shiffman.

Trial Examiner Guffey: What were the circumstances under which the statements were made to you?

The Witness: There were some discussions as to how the union organized and how we obtained a majority, and what the requirements were.

Trial Examiner Guffey: Just a minute. 212

I want to know more particularly about how these employees came into your office.

The Witness: The employees came into our office in response to a circular we had distributed, calling for a meeting.

(108)

Trial Examiner Guffey: This was a meeting at which these statements were made?

The Witness: Yes.

Trial Examiner Guffey: A meeting as to which you have already testified? 213

The Witness: Yes.

Trial Examiner Guffey: Were the statements made to you and Mr. Hiller privately, or were they stated from the floor at one of these meetings?

The Witness: They were all stated from the floor.

Trial Examiner Guffey: Was this desire of the employees expressed at the meeting by more than one person?

214 The Witness: Yes.

Trial Examiner Guffey: How many different persons would you say made such statements?

The Witness: I would say—well, it is a little difficult.

May I explain it to you a little?

Several of them got up and spoke and indicated their desires along that line, and there was much nodding of heads, and generally everybody agreed, and I think I asked them, "Is there nobody who disagrees with that point of view?" And they shook
215 their heads. Somebody got up and spoke, but I can't tell you the exact words, maybe three or four, but nobody took exception to those views, and it was generally understood that would be the thing.

(109)

Trial Examiner Guffey: Any other questions?

Mr. Friedman: Just a couple of questions.

RE-CROSS EXAMINATION:

Q. (By Mr. Friedman) Who presided at these meetings? A. I did.

Q. Do you keep minutes of meetings? A. We never
216 keep minutes of organizational meetings.

Q. You have no minutes of these meetings? A. No.

Q. Could you give me an approximation of how many people at the meeting of May 21st indicated that they did not wish the employees of Medo, other than those in the shipping department, to become members of the union? A. I believe that was the general understanding of the whole group there that night.

Q. Approximately, to the best of your recollection, how many members would you say there were at the May 21st meeting who indicated that? 217

* * * * *

(110)

The Witness: To give you an honest answer, Mr. Friedman, it would be a tax on my memory, and at best would be guesswork.

Q. (By Mr. Friedman) You have no recollection on it at all? A. When we held meetings, things were done in a very informal fashion and done collectively and through conversation more than formal meetings, and when conclusions are arrived at, they are done in such an informal manner that it is difficult to say just who it is. 218

Q. Would you say that ten or fifteen members discussed that? A. There were only six people at the May 21st meeting.

Q. Did all six indicate that preference? A. I don't know if they did or if they did not.

Q. But you don't know now any particular person who did, do you? That was your testimony, as I recall it. Is that correct? A. No, I don't.

Mr. Friedman: That is all. 219

Mr. Reitman: Nothing further.

Trial Examiner Guffey: That is all. Thank you, Mr. Stoltman.

(Witness excused.)

220 (111)

Mr. Reitman: Mr. Goshgarian.

WILLIAM GOSHGARIAN was thereupon called as a witness by and on behalf of the National Labor Relations Board and, having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Reitman) Will you state your name, Mr. Goshgarian? A. William Goshgarian.

Q. Mr. Goshgarian, by whom were you employed in
221 May 1941? A. Medo Photo.

Q. What was your job? A. Shipping.

Q. How many people worked in the shipping department? A. I don't quite understand the question. In the shipping department alone?

Q. In the shipping department alone. A. There are two sections of the shipping department, which is the local and the out-of-town.

Q. Will you keep your voice up? A. There are two sections of the shipping department, which is the local and the out-of-town.

222 Q. How many people work in the local? A. In the local department, about eight or nine.

Q. In the out-of-town? A. It varied from two to three.

(112)

* * * * *

Q. Did you at any time sign a card for membership in the American Photo Employees Union? A. I did.

Q. Did you hold any position in the Union? A. Not

(113)

223 until there was some sort of an election at which they decided that I was to be one of the delegates.

Q. When you say one of the delegates, what were you supposed to do? A. Well, as I understood it, I was to be in the arbitration of that, to decide on the salaries and such.

Q. Do you mean that you were elected a member of the negotiating committee? A. Yes.

Q. Were you elected by the membership at large? A. Yes.

224 Trial Examiner Guffey: What do you mean by the "membership at large"?

I take it there are employees in this local union other than respondent's employees.

Mr. Reitman: I will cover that.

Q. (By Mr. Reitman) You were elected by the membership of the workers of Medo Photo Supply? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. You did not mean by the entire union? A. No.

Q. Did you at any time have occasion to meet with the company as the representative of the employees and as a

(114)

225 member of a negotiating committee of the union? A. Well, we did meet with the employees, but we were not posing as union delegates.

Q. What were you posing as? A. We thought that since the boys felt that we were the delegates, we would represent them with their permission.

Q. Were you delegates of the men? A. Yes.

Q. Where did you have this—Withdrawn. When did you meet with the company? A. I can't remember any exact dates.

226 Q. Do you have any recollection at all of approximately what time it was? A. I know that it was after one of the union meetings.

Q. Was it in June? A. I can't say for sure. I don't know.

Q. Do you remember the day of the week? A. No, I don't.

Q. How long was it after you became a member of the union that you met with the company? A. Well, I don't think it was any longer than a few days.

Q. Do you recall whether it was Friday, June 6? A.
227 I don't recall the dates, what the date was.

Mr. Friedman: Do you want us to concede the date?

Mr. Reitman: Yes.

(115)

Mr. Friedman: It was Saturday, June 7.

Mr. Reitman: Saturday, June 7, was the first time you met with them?

Mr. Friedman: Not me.

Mr. Reitman: That they met with the company?

Mr. Friedman: They did not meet with the com-
228 pany, but they came up to speak with Mr. Hoppin.

Mr. Reitman: Saturday?

Mr. Friedman: Saturday, June 7.

Q. (By Mr. Reitman) Who met with you? A. There was Angelo Seminara, Gerard Munrett and Ray Bruchbacher.

Q. What time of the day was it? A. I think it was—I don't remember whether it was after working hours or not.

Q. Whom did you see? A. Mr. Hoppin.

Q. Who is Mr. Hoppin? A. That gentleman sitting at the desk (indicating). 229

Q. Do you know what his position with the company is? A. He is the general manager.

Q. Where did you speak with Mr. Hoppin? A. At his office.

Q. Is that the same building that the place is located? A. Where the firm is located, yes, sir.

(116)

Q. Who spoke first? A. I don't know who spoke first.

Q. Did one of the boys approach Mr. Hoppin, or did Mr. Hoppin start talking to one of the boys? A. One of the boys spoke to him first. 230

Q. What did they say? A. Well, they explained to him that they came up to speak on the matter of raises.

Q. Did Mr. Hoppin answer them? A. Naturally he wanted to know why.

Q. What did they say? A. Well, they told him that the boys downstairs felt that they deserved a raise, and since they were representing them, that they would like to talk about it.

Q. Did Mr. Hoppin answer the boys then? A. Mr. Hoppin asked us what else we had on our minds. 231

Q. Well, did you come to any decision about the wages? A. No, we did not; not at that time.

Q. Did you tell Mr. Hoppin the wages that you wanted? A. We gave him a list, yes.

Q. Where did you get the list? A. That list we made up amongst ourselves, that is, the boys and Mr. Hoppin did not know about it.

Q. When did you make it up? A. We had an idea

232 of the scale that the boys wanted, and we made that same
(117)
scale up in the office.

Q. Is this the same scale that the union had? A. Approximately.

Q. And that is where you got the original idea for the wage increase? A. Yes, sir.

Q. At the time when you went in to speak with Mr. Hoppin, were you a member of the union? A. I was.

Q. Did you want the union at the time that you walked in to see Mr. Hoppin?

233 Mr. Friedman: I object to that question.

Trial Examiner Guffey: Overruled.

The Witness: Well, there was—

Q. (By Mr. Reitman) Answer my question yes or no if you will. A. No.

Trial Examiner Guffey: Read the last question and answer please, Mr. Reporter.

(Question and answer read.)

Q. (By Mr. Reitman) What happened when you submitted your proposition for wage increases to Mr. Hoppin? A. Mr. Hoppin told us that he could not do any-
234 thing about it; that we had to be sure that this was of our own accord, that we went up to see him, and we told him that it was.

(118)

Q. What is that? A. Mr. Hoppin told us that we had to be sure that we were doing this of our own accord, and that it was done on our own.

Q. Keep your voice up because there are trucks below and we cannot hear you: Is that is all that he said? A. That is about all I remember.

Q. Did you say anything to him about whether it was of your own accord? A. I told him that it did not reflect on anyone else. I didn't say it myself, but I agreed that it was of my own accord. 235

Q. Did you tell Mr. Hoppin anything about the union, when you went to talk to him about getting these wage increases? A. Well, we told him that we didn't want a union, and we felt that if we could do without the union, that would be fine, because we didn't want the union.

Q. Did you tell Mr. Hoppin that, "If we could get our wages increased we would not have the union"? A. Well,

(119).

I didn't tell it to him, but that is the way we felt about it. 236

Q. Is not that the way the boys expressed themselves to Mr. Hoppin? A. I don't think so. It might have been the way I felt about it.

Q. Do you remember that I visited you at your home, just a few days ago, or a few evenings ago? A. That is right.

Q. Do you remember that I introduced myself as a representative of the National Labor Relations Board? A. That is right.

Q. And ask you to tell me what happened? A. That is right. 237

Q. Do you remember that I wrote down what you told me? A. Yes, sir.

Mr. Reitman: I ask that this document be marked for identification as Board's Exhibit No. 10.

Mr. Friedman: May I see it first, please?

Mr. Reitman: Yes, sir. (Handing document to counsel.)

238 (Whereupon the document above referred to was marked for identification as Board's Exhibit No. 10.)

Q. (By Mr. Reitman) Is Board's Exhibit No. 10 for identification the paper which I wrote out in my hand, and which you read over and signed? A. Yes, sir.

(120)

Q. Suppose you read it and see if it refreshes your recollection? A. (Reading to self) Yes, sir.

Q. I now ask you, at the time that you went in to see Mr. Hoppin, did you want the union?

239 Mr. Friedman: I object to the question as having been answered before.

Mr. Reitman: I think it is perfectly proper.

Mr. Friedman: And he is trying to impeach the witness called by the Board.

Trial Examiner Guffey: Objection overruled.

Q. (By Mr. Reitman) Will you please answer the question? A. No.

Q. I read to you from your statement—

Mr. Friedman: I object.

Mr. Reitman: Just one moment. May I finish

240 asking the question?

Mr. Friedman: If you are going to read from the statement, I object to your reading from a statement not in evidence.

Mr. Reitman: I offer this in evidence.

Mr. Friedman: I object to it being offered in evidence at this time. It is improper in view of the witness' testimony with respect to what took place at that particular time.

Trial Examiner Guffey: The objection is overruled and it will be admitted.

(121)

(The document referred to, heretofore marked for identification as Board's Exhibit 10, was received in evidence.) 241

Q. (By Mr. Reitman) Do you remember telling me that: "When I signed up with the union I wanted the union. I wanted the union up to the time that I received the wage increase from the company. When I received the wage increase from the company I felt that I did not need the union. The wage increase is what changed my mind. If I did not get the wage increase, I would have stayed with the union." Do you remember telling me that? 242

Mr. Friedman: I object to the question. The document is in evidence.

Mr. Reitman: All right. I will withdraw the question.

Q. (By Mr. Reitman) At the time that you spoke with Mr. Hoppin, did Mr. Hoppin ask you if you still belonged to the union? A. No, he did not.

Q. Did Mr. Hoppin ask you if any of you withdrew from the union? A. I do not think he did.

Q. Did Mr. Hoppin ask you whether you had any authority to deal for the employees in the shop? A. I don't remember exactly. 243

Q. Did Mr. Hoppin ask you to prove that you represented a majority of the employees in the basement department?

(122)

A. I don't think so.

Q. Did Mr. Hoppin question your authority to deal for the employees in the basement? A. I don't think so.

Q. You don't think so? A. No, sir.

244 Q. Did you receive any wage increase from the company? A. I did.

Q. How much of an increase did you get? A. $2.00.

Q. Have you gotten an increase since then? A. At the end of the year.

Trial Examiner Guffey: Is that in addition to the $2 increase?

The Witness: At the end of the year everyone got an increase. That has been the policy of the firm, that at the end of every year they would give out a raise.

245 Trial Examiner Guffey: When did you get this $2 increase?

The Witness: This was during the negotiating period.

Trial Examiner Guffey: How long after the conference on June 7?

The Witness: It was about six to seven months later.

Mr. Reitman: The first $2 increase?

Trial Examiner Guffey: When did you get the first $2 increase?

(123)

246 The Witness: I only got one $2 raise, and that was during the period of June..

Q. (By Mr. Reitman) Was that Monday, June 9th, when you got your increase? A. I don't remember the exact date.

Q. The beginning of June? A. About June, I would say.

Q. You have not gotten a raise since then, have you? A. I got a raise at the end of the year.

Q. You got another one? A. Yes, sir. 247

Q. Are you still working for the company? A. I am.

Q. How long have you been working for the company? A. Close to six years.

Q. Are you one of the oldest employees in the basement? A. I wouldn't say that.

Q. How many people are there in the basement who have been working there longer than you have? A. I don't know, exactly, but there are a few.

Q. Would you say that you are amongst the youngest employees working for the company? A. No; not the youngest.

Q. You have been there a great number of years, have you not? A. Yes. 218

(124)

Q. And you are amongst the group who have been working for the company for a long time? A. No.

Q. Six years is not a long time? A. There are longer periods than six years.

Q. I agree with you. Did you have any formal meeting—I will withdraw that. That is all.

CROSS EXAMINATION:

Q. (By Mr. Friedman) Is this statement in your handwriting, Board's Exhibit No. 10, Mr. Goshgarian? A. Yes, sir. 249

Q. Now, at that meeting on June 7th—

Mr. Reitman: I would like to make a correction there. This statement is written in my handwriting and signed by the witness. I wrote it myself.

Trial Examiner Guffey: Let us get it straight. He has testified both ways.

250 The Witness: I am sorry. He wrote that and I signed it.

Mr. Reitman: Before you signed it—

Trial Examiner Guffey: Just a minute. Let us get it straight. The body of the statement is in Mr. Reitman's handwriting, and the signature is in your handwriting?

The Witness: Yes, sir.

(125)

Mr. Reitman: Did you read this before signing it?

251 The Witness: I did.

Mr. Reitman: Does this represent what you told me?

The Witness: It represents it.

Q. (By Mr. Friedman) At this meeting on June 7 with Mr. Hoppin, is it not true, Mr. Goshgarian, that in addition to you being there with Mr. Bruchbacher, Mr. Seminara, and Mr. Munrett, the following employees were also present: Herbert Schroer, Stanley Abelow, Samuel Caracci, and William Koch, Dan Matthews, Nick Pergola and John Granito and Frank Bianca? A. Yes.

252 Q. They were present with you at the meeting which you had with Mr. Hoppin on June 7; is that right? A. That is right.

Q. They were all there? A. That is right.

Q. In addition to that, was not Mr. Hoppin informed by some of the employees appearing before him of this group of 12 employees, that they also spoke for Tom Valentine, Al Petrone, Ed Oliveri and Mervin Sussman, who either were out or on vacation? A. That is right.

Q. The employees told that to Mr. Hoppin? A. Yes, 253
r.

(126)

Q. Did they not also tell Mr. Hoppin that they spoke
r E. Schroeder and Bob Ritchie, who were then out on
e truck? A. Yes, sir.

Q. So that the whole group of employees came to see
r. Hoppin on this Saturday, June 7? Is that not cor-
ct? A. That is correct.

Q. Not a particular committee but all the employees
this particular department came to see him; is that
ght? A. Yes, sir. 254

Q. Did this group go there of its own volition? A.
did.

Q. Did Mr. Hoppin call you up, or did you arrange the
pointment, or did this group arrange the appointment
h Mr. Hoppin? A. The group arranged the appoint-
nt.

Q. Of their own accord? A. Of their own accord.

Q. Nobody induced them to do it? A. Not in any
y.

Q. Did anybody, that is, anybody at Medo, induce
, or, to your knowledge, any of the other members, em- 255
yees of the shipping department, to state at the meet-
on June 9 that you did not want the union?

Mr. Reitman: Objection.

The Witness: They did not.

* * * * *

(127)

Q. (By Mr. Friedman) Now, at this meeting on June
ith Mr. Hoppin, didn't Mr. Hoppin tell you and the
er employees, when some question of the union was

256 raised, that he did not want to discuss union activities with you? A. Yes, sir.

Q. Didn't he also tell you that the employees had a right to decide for themselves whether they wished to join a union or not? A. That is right.

Q. And that he did not want to have any discussion on that subject? A. That is right.

Q. Is that the only discussion which you had with Mr. Hoppin on June 7, that is, the request presented to him for an increase in salary? A. That is right.

Q. That was the only subject of discussion? A. That
257 is right.

Q. And the employees, including yourself, from the shipping department, decided amongst themselves that they wished to speak to Mr. Hoppin and request him for

(128)

an increase in salary; is that right? A. That is right.

Q. And you asked him for certain increases on that day, didn't you? A. We did.

* * * * *

Trial Examiner Guffey: How material is it, how
258 much of an increase they requested for each employee?

Mr. Friedman: I thought the materiality was this, your Honor:

I wanted to show that the increases which were requested, and the increases that were allowed, first, the amount allowed was less than that requested, and the amount allowed was less than the union requested under their contract, to combat the contention made by the Board that the employer

was quilty of an unfair labor practice, in that he must have induced—which is so far only inferred—the employees to come to the employer and to decide not to join the union. 259

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(129)

Mr. Friedman: It is stipulated that at the conference on June 7, 1941, between the employees of Medo and Mr. Hoppin, that the employees requested the following increases:

An increase to $18 per week for Scvhroer, Abelow, Koch, Valentine, Caracci, Matthews and Oliveri. 260

An increase to $15 per week for Petrone, Pergola, Sussman, Schroeder and Ritchie.

An increase to $23 per week for Bruchbacher, Seminara, Goshgarian and Munrett;

(130)

And that subsequently those increases were granted, except that Bruchbacher, Seminara, Goshgarian and Munrett were increased to $21 per week instead of the $23 per week as requested.

Mr. Reitman: It is so stipulated.

Q. (By Mr. Friedman) Did you ever see the proposed contract that the union intended to submit to Medo? A. Well, there was a list made out, I believe. 261

Q. An agreement? A. The list, so far as I know.

Q. When you say "list", are you referring to an agreement between the union and Medo? A. Not an agreement.

Q. You never saw the agreement? A. No.

Q. So that you don't know what the provisions were

262 in the proposed agreement for increases in salaries, do you? A. No.

Mr. Friedman: Will you concede that? You have got a copy of the agreement. We don't have to bother him on that.

Trial Examiner Guffey: Do counsel agree as to on what date these wage increases became effective?

Mr. Friedman: They went into effect the week ending June 13, 1941.

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263 Trial Examiner Guffey: Is that when they began to become effective, or is that when they first received the increased pay?

Mr. Friedman: They received the increased pay for the first time for the week ending June 13, 1941.

* * * * * *

Mr. Friedman: It is stipulated that under the proposed agreement of the union the following salaries were proposed for the following employees:

Schroer, $21 a week.
Abelow, $21 a week.
264 Koch, $21 a week.
Valentine, $21 a week.
Caracci, $21 a week.
Matthews, $21 a week.
Oliveri, $21 a week.
Petrone, $17.
Pergola, $17.
Sussman, $17.
Schroeder, $17, and
Ritchie, $17.

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Bru hbacher, $25. 265
Seminara, $25.
Goshgarian, $25.
Munrett, $25.

* * * * *

Q. (By Mr. Friedman) Now, you attended a meeting with the union officials, that is, Mr. Stoltman, Mr. Hiller, and some of the representatives of Medo, and some other employees, at our offices on June 9, 1941; is not that right? A. Yes.

Q. At that meeting did you state that you and the other 266
employees present had voluntarily decided not to join the union? A. We did.

Q. Did anybody induce you to make that statement at that meeting? A. No.

Q. You made that statement of your own free will and accord? A. I did.

Q. And that is also true with respect to the other employees present at that meeting? A. Yes.

* * * * *

(133)

Q. (By Mr. Friedman) When you had your conference 267
on June 7 with Mr. Hoppin and the wage increase proposals were submitted to him, Mr. Hoppin said he could not act upon them until Mr. Niemeyer returned; is that right? A. That is right.

Q. Mr. Niemeyer is president of Medo Photo Supply Corporation? A. Yes, sir.

Q. And he was away at the time? A. He was.

Q. And had been away for some time prior to that? A. Yes, sir.

268 Q. Did Mr. Hoppin tell you he was expected back to the place of business the following Monday? Is that right? A. He said he was expected back, yes, sir.

Q. Mr. Hoppin told you that he would have to take it up with the president of the company before he could act on it? A. He did.

Mr. Friedman: That is all.

Trial Examiner Guffey: Re-direct examination.

(134)

RE-DIRECT EXAMINATION:

Mr. Reitman: Just a little bit.

2?9 Q. (By Mr. Reitman) How did you submit or present this plan of proposed wage increase? A. Well, we were all up at the office, most of the employees and myself, and we all had agreed on what amount that we should ask for for each department.

Q. You used as the basis for preparing this list the discussion which you had at the union office—

Mr. Friedman: I object to that question. Pardon me; I thought you had finished.

Q. (Continuing)—when a list was prepared, designating the proposed wage increase?

270 Mr. Friedman: I object to the question on the ground that it has been gone over on direct examination, and it is merely repetitious of what Mr. Reitman asked the witness before.

Trial Examiner Guffey: Overruled.

* * * * *

The Witness: That is right.

Q. (By Mr. Reitman) And at the time that you prepared the proposed list at the union headquarters, you

were told that that list was for bargaining purposes, and that you would probably only get an increase of $2 or $3 apiece? Is not that right? 271

(135)

Mr. Friedman: I object to that question on the ground that it improperly states the testimony.

* * * * *

Trial Examiner Guffey: Objection sustained.

Q. (By Mr. Reitman) Were you present at the union office when wage increases were discussed? A. I was.

Q. And you participated in the discussion of preparing a proposed plan of wage increases? A. I was there but I don't recall participating. 272

Q. Did you hear what they said? A. I did.

(136)

Q. And at the time that the people at the union headquarters, that is, the employees and the union officers, discussed the proposed wage increases, did not the union officials tell you that these figures were for bargaining purposes and that you would probably only get an increase of $2 or $3 apiece? A. That is right.

Q. And the request that you submitted to the company was only a request for approximately $2 or $3 apiece? Is not that right? A. All that was submitted. We did not know what we would get. 273

Q. But was the request a request to obtain that amount of increase apiece? A. In some cases more.

Q. How much were you earning before you got your raise? A. I was getting $19.

Q. And you asked for $23? A. I did.

Q. How much were the errand boys earning? A. As far as I know, $12.

274 Q. And you asked for $15 for them? A. I believe that is what it was.

Mr. Friedman: Mr. Reitman, we will give you a list of the payroll.

(137)

Mr. Reitman: There is just one more question, one more classification.

Q. (By Mr. Reitman) And the boys in the order department, what were they earning? A. I don't know what they were earning.

Q. Was the increase which you were requesting for
275 them approximately $2 or $3? A. In some cases more. I don't know for sure.

Q. You asked for an increase according to departments, did you? A. That is right.

Q. And most of the men in the department earned the same salary, did they not? A. It varied. I don't recall all their wages.

Q. And it was the wage increase which you got from the company which changed your mind and made you decide you didn't need the union? Is not that right?

Mr. Friedman: I object to that question as re-
276 peatedly asked the witness on direct examination.

Trial Examiner Guffey: Overruled.

Q. (By Mr. Reitman) Is not that right? A. Well, I—for myself I was only interested in the raise. I did not want to have the union, and I—

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Mr. Reitman: I am asking you to answer the question yes or no, Mr. Witness.

Mr. Friedman: I object. He cannot answer that

question yes or no. The witness should be permitted to answer it the best he can. 277

Mr. Reitman: The question is plain.

Trial Examiner Guffy: If he cannot answer it yes or no, he can explain it.

The Witness: I felt—

Q. (By Mr. Reitman) Can you answer that question yes or no? A. I can't. I would have to give you what my idea on the thing was.

Q. All right, suppose you do that, suppose you do that. A. I felt that we did not need a union, and if we could get the raises, there was no necessity for the union.

Q. And if you could not get raises, would you have the union? A. That was amongst ourselves and no one else. 278

Q. Can you answer that question yes or no? A. I

don't think so.

Q. Supposing Mr. Hoppin told you he could not give you a raise?

Mr. Friedman: I object to the question.

Trial Examiner Guffey: Well—

Mr. Reitman: I will withdraw it.

Q. (By Mr. Reitman) Do you remember telling me that if you did not get the wage increase, you would have stayed with the union? 279

Mr. Friedman: I object to that question on the ground that the document from which Mr. Reitman is reading is already in evidence, and there is no necessity of going over it again.

Trial Examiner Guffey: Overruled.

Q. (By Mr. Reitman) Do you remember telling me that? A. Do I remember what?

280 Q. Telling me that if you could not have gotten the wage increase, you would have stayed with the union? A. That is my personal belief.

Q. That is what you would have done, yourself? A. Yes.

Q. And it was, then, the wage increase which made you leave the union? Is not that right? A. There was no talk about the union.

Q. I want you to answer my question yes or no, and you can answer it yes or no. It was the wage increase

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281 which changed your mind and made you leave the union. Is not that right?

Mr. Friedman: I object to the question as already testified to, as to what made him do it.

Trial Examiner Guffey: Read the question, please, Mr. Reporter.

(Question read.)

Trial Examiner Guffey: Overruled.

Q. (By Mr. Reitman) Will you answer the question yes or no? A. Yes.

Q. Did you ever resign from the union? A. I don't

282 recall resigning.

Mr. Reitman: That is all.

RE-CROSS EXAMINATION:

Q. (By Mr. Friedman) Didn't you tell Mr. Stoltman at the meeting on June 9, at our office, that you did not want to join the union and have him represent you? A. That is right. We told him that we didn't want the union.

Q. When you told Mr. Stoltman that, didn't Mr. Stoltman get up and leave the office? A. He did.

Q. Did you hear Mr. Stoltman say that he would picket Medo and boycott its customers? 283

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(141)

The Witness: Yes.

Mr. Reitman: That was the first time you ever told Mr. Stoltman that you did not want the union to represent you?

The Witness: Right there, yes.

Trial Examiner Guffey: What, if any, agreement did you employees who conferred with Mr. Hoppin on June 7 have among yourselves before 284
you went in to see Mr. Hoppin?

The Witness: The agreement amongst us was that we did not need the union, because we had our two weeks' vacation, and they were pretty lenient with us, and the only reason why we wanted the union was to get the wage increase, and that if we could get the wage increases, without the help of the union, we would be better off without it.

Trial Examiner Guffey: How was that agreement amongst yourselves reached? Did you have a meeting some place, or did you just talk it over in- 285
formally amongst yourselves, or what?

The Witness: We did talk it over informally, and just a few asked all the boys, or most all the boys, if they were all with us on the same idea.

Trial Examiner Guffey: How long before June 7 was it that you came to this conclusion?

The Witness: It was just before the union was going to negotiate terms.

286 (142)

Trial Examiner Guffey: How long before June 7 was it?

The Witness: I believe it was one or two days before.

Trial Examiner Guffey: After you had agreed among yourselves that you needed a union only to get a wage increase, what did you do?

The Witness: We decided that we should go up to see Mr. Hoppin and the bosses and explain to them that our only purpose in coming to see them
287 was for a wage increase.

Trial Examiner Guffey: How did you go about arranging for that conference with Hoppin?

The Witness: Two or three of the boys asked for an appointment to see him, and the appointment was made.

Trial Examiner Guffey: How did they ask?

The Witness: The question was put to him that the boys would like to speak to him about the pay increase.

Trial Examiner Guffey: How was it put to him?
288 Did they call him on the phone, write a letter or what?

The Witness: We went up to his office.

Trial Examiner Guffey: Did you see him the first time you went to the office?

The Witness: We did.

Trial Examiner Guffey: What date was that?

The Witness: I don't remember the date.

Trial Examiner Guffey: How long before June 7?

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289 The Witness: I can't recall. It was all in a short period of time.

Trial Examiner Guffey: What did you say to him on that occasion?

The Witness: The first time we went up we told him that the boys would like to talk to him about the pay increases.

Trial Examiner Guffey: Did you all go up at that time?

The Witness: Most of us did. Twelve boys or about twelve went up. The majority of the fel- 290 lows who were working downstairs.

Trial Examiner Guffey: What did Hoppin say when you told him that?

The Witness: He told us that they didn't want to have any trouble with the union, and we are going to work it out on our own accord.

Trial Examiner Guffey: He told you that you were going to do it of your own accord?

The Witness: Yes, he asked us if there was no one who had gone up to see him about it for any other reason than that we merely wanted to go up 291 about a wage increase. That is what we were talking about.

Trial Examiner Guffey: Had anyone prior to that time said anything to any of the employees about going up and conferring with Hoppin?

The Witness: No, sir.

Trial Examiner Guffey: What happened after that?

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292 The Witness: Well, we spoke of different wage increases that we would like, and Mr. Hoppin told us that he would like us to know about it.

Trial Examiner Guffey: Then what happened?

The Witness: Later on we called up again, that is we went up, and Mr. Hoppin told us that they had reached some sort of agreement, and the raises were discussed, what raises were to be given us.

Trial Examiner Guffey: On what date was it?

The Witness: Probably the following day, but I

293 don't recall.

Trial Examiner Guffey: That was June 7, was it?

The Witness: It was all around that date.

Trial Examiner Guffey: How did you happen to go back the second time? Were you called to come back, or did you call up and ask if you could see him again

The Witness: I don't recall directly, but I believe that we went up and asked if everything was decided.

Trial Examiner Guffey: Then what happened after you asked him that question?

294 The Witness: We told him that we decided, the rest of the boys would like to know what the results were, and we all agreed, and we told him we were in favor of it.

Trial Examiner Guffey: Did he tell you at that

(145)

time that they had agreed to grant a certain wage increase, or what? What was it that led you to make the reply to him?

The Witness: Well, he showed us just what list we would get, what the raises were.

Trial Examiner Guffey: Then you agreed to take the information back to the employees? 295

The Witness: Yes, sir.

Trial Examiner Guffey: Did you just discuss the matter amongst yourselves fully after that time?

The Witness: We asked everyone about it, and there was no special meeting of the fellows, or anything of that sort, but we asked everyone, and they were in favor of it.

Trial Examiner Guffey: Then what did you do?

The Witness: So we told Mr. Hoppin that the boys downstairs felt that they did not need the union, 296 and we would rather stay out.

Trial Examiner Guffey: Anything further?

Mr. Friedman: Nothing.

Mr. Reitman: Nothing further.

Trial Examiner Guffey: That is all.

(Witness excused.)

Trial Examiner Guffey: Call your next witness.

Mr. Reitman: Angelo Seminara.

ANGELO SEMINARA called as a witness by and on 297
(146)
behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Trial Examiner Guffey: State your name and address to the reporter, please.

The Witness: Angelo Seminara, 38-20 12th Avenue, Brooklyn.

298 Q. (By Mr. Reitman) Mr. Seminara, in May of 1941, by whom were you employed? A. Medo Photo Supply Corporation.

Q. Where did you work? A. In the receiving department.

Q. In the basement? A. That is correct.

Q. Where do you work now? A. I am a stock clerk.

Q. Is that in the basement? A. That is right.

Q. What department is that in? A. The order department.

Q. Do you do the same type of work that you did in
299 May? A. No.

Q. Is this a better job than you had in May? A. About the same.

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Q. Do you consider this job a promotion from your position in the receiving department? A. I suppose so, yes.

Q. Did you receive a wage increase in June? A. Yes.

Q. Did you receive another wage increase after that? A. Yes, I did.

Q. Did you ever join the union? A. I don't know what you mean by joining.

300 Q. Did you ever sign an application card designating the union as your bargaining agent? A. Yes.

Q. You were a member of the negotiating committee with William Goshgarian, Ray Bruchbacher, and Mr. Munrett? A. That is right.

Q. After you had signed this application card with the union, did you have occasion to meet with the company? A. After?

Q. Yes. A. I only met with the company once.

Q. When? When did you meet with the company? A. On

June 7th, the day the fellows went up to negotiate the raises. 301

Q. Who went up to negotiate the raises? A. Myself and Mr. Bruchbacher, Mr. Munrett and Mr. Goshgarian and some of the other fellows.

(148)

Q. Some of the other fellows? A. Yes, sir.

Q. Do you remember what happened at the time that you spoke to Mr. Hoppin? A. I do.

Q. What happened? A. Well, as it was told by the preceding witness, we went up to see Mr. Hoppin, and we told him that we would like to speak to him about increases 302 in our salary, and we told him just exactly what increases we wanted for each separate department.

Q. Did you tell him what the union offered you? A. No, we did not. We told him what we wanted, and not what the union wanted.

Q. Did you tell him—go ahead and tell us the rest of the conversation. A. Mr. Hoppin turned around and told us that he could not do anything, or give us any increases in salary, until he spoke to Mr. Niemeyer, who was the president of the firm, and who was out of town at that time, and told us to come back the following morning. I 303 don't recall whether it was a Saturday or a Monday after that that he was coming back.

Q. Mr. Hoppin told you to come back? A. Mr. Hoppin told us to come back, and we did that, and he had prepared

—

(149)

Q. Who returned? A. Just the committee. There were four of us when we went back, and he had prepared a list, of just what increases Mr. Niemeyer was willing to give us.

304 Q. Was that what you boys had asked for? A. All but the $23 a week. Four of us were cut down to $21 instead of $23, and everyone else got what they asked for.

Q. Did you tell Mr. Hoppin, then, that they were acceptable? A. We did not tell him just then, and we told him we could not accept until we went downstairs and spoke to the rest of the boys, and he told us to do that.

(150)

Q. Did you have authority from the boys to ask for a certain figure? A. We did.

Q. And you got the rest of the boys just what they
305 asked for, didn't you? A. That is right.

Q. Why was it necessary to go back and get the authority from the boys, if you got what they asked for?

Mr. Friedman: I object to the form of the question.

Trial Examiner Guffey: Sustained.

Q. (By Mr. Reitman) At the time that the boys told you how much they wanted, did they indicate to you that if you could get it, it would be satisfactory to them?

Mr. Friedman: I object to that as not being a proper review of the testimony.

306 At the first meeting on June 7 there were twelve employees there, and they asked for their wage increases. They did not tell Mr. Seminara, but they were there to speak for themselves.

Trial Examiner Guffey: Sustained.

You can ask with respect to the ones who were not there on June 7.

Mr. Reitman: Read the question, Mr. Reporter, please.

(Question read.)

Q. (By Mr. Reitman) Were there any boys who were 307
(151)
seeking wage increases who were not present at this meeting on June 7? A. There might have been a few, two or three.

Q. Did those boys know how much of an increase you were asking for? A. They did.

Q. And did they authorize you to take the increase for them if you could get what they were asking for A. They did.

Q. Were the boys that were present with Mr. Hoppin in the 7th satisfied to accept the increase that they were ask- 308
ing for? A. They were.

Q. When you went back up to see Mr. Hoppin, to see if you could get the increase, did the boys tell you, "Did you get the increase we asked for, it will be all right"? A. They didn't tell us it would be all right, but we told them that we would come down and let them know what Mr. Hoppin told us before we decided upon anything.

Q. Your minds were not made up about taking the increases at that time, were they?

Mr. Friedman: I object to the question. It is entirely improper. 309

Trial Examiner Guffey: Overruled.

Q. (By Mr. Reitman) Will you answer the question?
(152)

A. My mind was, yes, but I do not know about the others.

Q. What was the purpose of going back to see the other boys?

Mr. Friedman: I object to that question as improper.

310 Trial Examiner Guffey: What is the purpose of this?

Mr. Reitman: To indicate that there was a condition existing in the plant at that time as to what the course of action of these people would be, and that condition was the question of increases.

You understand, Mr. Examiner, that the witnesses which the Board is obliged to call are people still employed by the company, and there is naturally possible reticence as to their testifying to many of the facts occurring, and it is difficult to try to get the
311 facts before you without leading the witnesses and without going on fishing expeditions.

Trial Examiner Guffey: All right, proceed.

Objection overruled.

Mr. Reitman: Read the question, Mr. Reporter, please.

(Question read.)

The Witness: I answered that before.

Trial Examiner Guffey: Answer the question.

Q. (By Mr. Reitman) Answer the question for me now, please. A. I don't understand the question.

312 Q. Why did you go back? What was the reason for going back to see the boys after you had spoken to Mr. Hoppin?

Mr. Friedman: Same objection.

(153)

Trial Examiner Guffey: Overruled.

The Witness: The same reason.

I told you before.

Q. (By Mr. Reitman) I am asking you to tell me now. A. We went downstairs and told them just what the boss was willing to pay.

Q. But they knew what the demands were, did they not? A. Yes, they did. 313

Q. Did you tell everybody? A. Practically.

Q. Did you accept any wage increases for any people that you did not tell? A. I told one or two, where there might have been one or two.

Q. Did you have any authority? A. I did.

Q. Did Mervin Sussman ever authorize you to bargain for him? A. I think he did, yes.

Q. You are sure of that? A. Not sure, but I think so.

Q. Is it not a fact that Mervin Sussman never authorized you to bargain for him, and for the first time Sussman 314 learned of a wage increase was when you told him, after the wage increases were granted? A. I don't recall.

(154)

Q. Is that not a fact? A. I don't know.

Q. You wouldn't know? A. No.

Q. Going back to your conversation with Mr. Hoppin, did you tell Mr. Hoppin what the union offered you? A. No, I didn't.

Q. Did you tell Mr. Hoppin if he would equal or come within reasonable range of the union's offer, you would rather have a non-union shop? A. Not that I remember. 315

Q. Do you remember speaking with Mr. Livingston, the attorney for the National Labor Relations Board? A. I do, yes, sir.

Q. Do you remember explaining to Mr. Livingston all you knew about this matter? A. Yes, sir.

Q. And Mr. Livingston wrote out all the information which you gave him? A. Yes, sir.

Mr. Reitman: I ask that this document be marked for identification as Board's Exhibit No. 11.

316 Trial Examiner Guffey : It may be so marked.

(The document referred to was marked Board's Exhibit No. 11 for identification.)

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Mr. Friedman: May I see it please?

Mr. Reitman: Yes, sir. (Handing document to counsel).

Q. (By Mr. Reitman) I hand you Board's Exhibit No. 11 for identification and ask you whether that refreshes your recollection? A. (Reading) Yes, it does now.

Q. Is it not a fact, then, that you told Mr. Hoppin
317 what the union offered? A. That is right.

Q. Is it not a fact that you told Mr. Hoppin that you would rather have a non-union shop, if he would equal or come within reasonable range of the union offer? A. Yes.

Q. And you told Mr. Hoppin that if you received a wage increase, you would forget about the union? A. Not in that term, no.

Q. Is that what you indicated to Mr. Hoppin? A. That is what we meant.

Q. Did Mr. Hoppin talk to you at any time about join-
318 ing the union? A. I think he mentioned it, yes.

Q. When did he mention it? A. After we went up and asked for our increase.

Q. What did he say to you?

Mr. Friedman: What is that?

(156)

The Witness: After we went up and asked for our increase. He told us that it wouldn't make any difference to him whether we did join or did not. It was entirely up to us.

Q. (By Mr. Reitman) Did Mr. Hoppin say, "If you want to join the union, that is all right, and if you don't, it is better yet"? A. Yes, he did. 319

Q. Those are Mr. Hoppin's words, to your best recollection? A. To my best recollection.

Q. Did this take place when you went up and talked to him about the wage increases? A. Yes, sir.

Trial Examiner Guffey: Which time? He talked to him twice.

Q. (By Mr. Reitman) Was this on June 7? A. The first time.

Q. June 7? A. Yes. 320

Q. Up to the time that you got the wage increase, the union was designated to bargain for you, was it not? A. I don't get the question.

Q. You had designated the union to bargain for you originally, had you not? A. That is right, yes.

Q. And up to the time that you went to speak to Mr.

(157)

Hoppin, the union was still your bargaining agent, was it not? A. I suppose so.

Q. And the union ceased being your bargaining agent when Mr. Hoppin gave you the raise, is not that right? 321
A. Yes.

Q. And it was the raise which removed the union as your bargaining agent? Is not that right? A. Not only the raise, no.

Q. You told us before that if you did not get the raise—I will withdraw that. You told us that you let Mr. Hoppin know that you would leave the union if you did get the raise? A. No.

322 Mr. Friedman: I don't recall the witness testifying to that effect.

Q. (By Mr. Reitman) Didn't you say that you would rather have a non-union shop, if Mr. Hoppin would equal or come within reasonable range of the union's offer? A. That is right, yes:

Q. And if Mr. Hoppin would, you said you were going to leave the union? A. I didn't tell him that we were going to leave the union.

Q. Didn't you say that that was what you meant, and that that is what you indicated? A. I might have in-
323 dicated it, but I didn't tell him that.

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Q. Therefore, it was the raise which you got which decided your leaving the union? A. I had a pretty definite idea what I was going to do before I went up there. It was not only the raise which decided it.

Q. The raise had some significance? A. Naturally. Of course it did.

Q. Were you the head of this committee? A. I was not.

Q. Who was the head of this committee? A. There was no head.

324 Q. Who did the talking for the committee? A. Whoever got up and talked first.

Q. Did you get up and talk first? A. I didn't speak first, but I had something to say, though.

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(162)

Q. (By Mr. Reitman) Do you remember having a conversation with me about two or three days ago at a hotel, in the lobby of a hotel on the corner of 47th? A. Yes.

Q. During the noon lunch hour? A. Yes.

Q. Do you remember telling me that the employees decided that if the company would give them increases without the union, they would not continue their membership in the union, and if the company did not give increases, they agreed to remain in the union? A. May I ask a question, please? 325

Q. Surely. A. Were we in the union?

Q. What? A. Do you consider us as being in the union?

Trial Examiner Guffey: Just a moment. Just answer the question.

Q. (By Mr. Reitman) Do you remember telling that? A. Yes, I remember.

Q. Where did this conversation take place? A. The lobby of a hotel. 326

Q. Where did the employees decide, or where did they

discuss this? A. Just in general.

Q. Where? A. In the back part of the basement.

Q. Who was present? A. Most everyone.

Q. When did they make this decision? When did they discuss this? A. A few days before we went up to see Mr. Hoppin.

Q. That was the basis of your going up to see Mr. Hoppin, is not that correct? A. Yes, sir. 327

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328 **Stenographic Transcript of Testimony at Hearing of May 1, 1942.**

(Same Title.)

24th Floor, 120 Wall Street,
New York, New York,
Friday, May 1, 1942.

The above-entitled matter came on for hearing, pursuant to adjournment at 9:30 o'clock a. m.

Before:

329 William F. Guffey, Jr., Trial Examiner.

Appearances:

Same as at previous hearing.

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PROCEEDINGS.

Trial Examiner Guffey: The hearing will please be order.

Mr. Friedman: May I request the permission to call a witness out of order? The Board called a former em-

330 ployee, Ray Bruchbacher, who is now in the Army, and he appeared here yesterday. For some reason, the Board decided not to use his testimony. He has to report back to Camp Upton today, and I would like to put him on as a witness for the Respondent now.

* * * * *

RAYMOND G. BRUCHBACHER was called as a wit- 331
ness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

Direct Examination:

Trial Examiner Guffey: Give your name and address to the reporter, please.

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The Witness: Raymond Bruchbacher, 109-30 124th, South Ozone Park.

Q. (By Mr. Friedman) Mr. Bruchbacher, in May of 1941 where were you employed? A. Medo Photo Supply. 332

Q. In what capacity? A. As a stock clerk.

Q. What is your occupation now? A. I am working for the Army.

Q. How long have you been in the Army? A. About eight or nine days.

Q. How long has it been since you left the employ of Medo? A. About two and a half weeks.

Q. Did you attend any meetings of the Union that was trying to organize the employees of Medo in the month of May, 1941? A. Yes, one.

Q. You attended one meeting? A. Yes, sir. 333

Q. Do you recall how many of the employees were present at that meeting? A. About eighteen.

Q. Was that meeting held sometime toward the end of May 1941? A. Yes.

Q. Was Mr. Stoltman present at the meeting? A. He

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was.

Q. Did Mr. Stoltman preside at that meeting? A. Yes.

* * * * *

Q. (By Mr. Friedman) Will you state what was said

334 at this meeting by Mr. Stoltman? A. Mr. Stoltman spoke, and he asked for a few men, preferably three or four, for a committee for the fellows down at Medo, and a few names were called off, Mr. Seminara, Mr. Goshgarian and Mr. Munrett, and then he spoke to us, and he said that these men would represent the fellows down there, to speak or to come to any conference or to an agreement which they

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were going to make with the company, and he said that he wanted to know what pay they wanted, and he spoke to them about it, and they spoke about the different depart-
335 ments and what each department was getting in the way of pay. He told us what the Union would do for us about working, and what hours we worked, and that we would have the same conditions that we have now, that is, two weeks pay for vacations, and he said that we would have to go out on strike, sympathy strikes sometimes, and he said that the boss was not allowed to approach us, and if anything was done we had to approach him. That is about all.

Q. That was the entire substance of his statement at that meeting? A. Yes, sir.

336 Q. Was there any discussion about the limitation of membership of the Union? A. No.

* * * * *

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Q. (By Mr. Friedman) Did you ever have any conversations with any of the employees with respect to limiting the membership of the Union to the employees of the shipping department alone? A. No.

(171)

Q. Did you ever have any such conversations with Mr. Stoltman? A. No.

Q. Now do you recall seeing Mr. Hoppin on June 7, 1941? A. Yes. 337

Q. Do you recall what day of the week that was? A. That was a Saturday.

Q. What time of the day did you see him? A. Well, first I saw him at eleven o'clock.

Q. In the morning? A. That is right.

Q. Before you saw Mr. Hoppin, did you have any conversation with your fellow employees? A. Yes.

Q. With whom? A. I spoke to most of the fellows down in the basement that were working at the time, and that were there. 338

Q. Tell us what the substance of that conversation was. A. Well, I went to each one. First I started off with Bill Goshgarian, and I asked him what he thought of the union, and he told me, and I asked him why he wanted the union, and he said, "Well, most of the other fellows want it." I told him that was the same way I felt, and that was the only reason I had signed. He said, "Well, let's talk it over with some of the other fellows," and we did, and I

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got hold of one fellow at a time, not to interrupt any work, and I asked them what they thought about the union and why they joined it, and each one seemed to have the same answer, because the other fellows in the department wanted it. At the end I spoke to them all, and I told them that Mr. Stoltman told us at the previous meeting that the employer was not allowed to speak to the employees, but that the employees were allowed to speak to the employer, and we agreed that we would speak to Mr. Hoppin. I went upstairs and I asked Mr. Hoppin— 339

Q. Who decided that you should go upstairs and speak

340 to Mr. Hoppin? A. The fellows said I was the one who was talking, and I might as well do it.

Q. Had the employer spoken to you before June 7, and before you spoke to your fellow employees, requesting you to circulate among the employees? A. No.

Q. Had anybody spoken to you requesting you to do that? A. No.

Q. Your actions on June 7 were of your own free will and accord? A. That is right.

Q. Had you discussed the matter with anybody before June 7? A. Yes.

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Q. With whom? A. My family.

Q. And you discussed with them the union activities going on in Medo? A. Yes.

Q. What did you say about it? A. I spoke to my father, and I told him that they wanted to get a union down at work, and I told him what the union would give us. My mother said, "There seems to be contentment there now, and it would start a lot of trouble," and she asked me how I felt about it, and I told her most of the fellows wanted it, and that was the only reason I signed a card. She said,

342 "Why don't you see the other fellows and see what they think?" And I spoke to them about it.

Q. After the conversation with your parents, you spoke to your fellow employees? A. That is right.

Q. You went to see Mr. Hoppin about eleven o'clock on June 7? A. Yes, sir.

Q. What happened when you went to see Mr. Hoppin? A. I went to see Mr. Hoppin, and I said, "The fellows would like to speak to you this afternoon, if possible," and he said, "Sure, after work."

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343

Q. That is all that took place at that time? A. Yes.

Q. What did you do after leaving Mr. Hoppin's office? A. I went downstairs and told the fellows we were to go up to Mr. Hoppin's office that afternoon.

Q. Did you go up to Mr. Hoppin's office that afternoon? A. About one o'clock.

Q. About one o'clock? A. Yes, sir.

Q. Who went with you? A. All the fellows working downstairs there.

Q. About how many? A. About twelve or more.

Q. Did Seminara go with you? A. Yes, he was there. 344

Q. Goshgarian? A. That is right.

Q. Munrett?

Mr. Reitman: Mr. Examiner, I am going to object to this as leading. If he wants a list of employees who were there, I think it is proper for the witness to answer and tell who were there.

Trial Examiner Guffey: Sustained.

Q. (By Mr. Friedman) Do you recall the names of the employees who went with you? A. Most of them.

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Q. All right, who were they? A. There was Bill Goshgarian, Angelo Seminara, Gerry Munrett, Sam Carracci, Johnnie Granito, I think Frank Bianca was there, and Herbert Schroer, and Danny Mathews, and Stanley Abelow. That is about all I can remember. 345

Q. There was a total of about twelve that you testified to. Is that right? A. About that.

Q. When you came into Mr. Hoppin's office, what happened? A. Well, all the fellows came in and Mr. Hoppin said, "Have a seat." We sat down and he said, "Well,

346 what is it"? I said, "Well, Mr. Hoppin, I suppose you know about the union." He said, "I don't want to hear anything about it." I told him, I said, "Well, all the fellows think they do not want a union, but they would rather have a raise, and that is really what they came in for." He wanted to know what the raises were, and we told him what each department would get, and he spoke to us about it and he said, "Well, some of them can't get too much," and he said, "Some of them are too high," and we argued it out. He said, "Mr. Niemeyer is not here right now, and he won't be in until Monday," and he would have to

347 (176)

speak to him about it. He said, "The best thing to do is to come back about eleven o'clock Monday."

Q. And that was the substance of the conversation that you twelve employees had with Mr. Hoppin? A. That was about it.

Q. Did you tell Mr. Hoppin what increases and salaries you desired? A. Yes.

Q. Do you recall what they were? A. Yes, I think the errand boys were to get fifteen dollars a week, and order pickers, eighteen dollars, and we wanted about $16.00 or

348 $17.00 for the fellows helping on the truck, and Mr. Hoppin said, "They are about the same as the errand boys," so they settled for fifteen dollars. The assistant shipping clerk was to get eighteen dollars, and the older fellows who were there were to get twenty-three dollars.

Q. Did you appear at Mr. Hoppin's office on Monday, at eleven o'clock? A. No, I did not.

Q. Were you working that day? A. I was supposed to be working, but I had to go down to the draft Board in the morning.

Q. What time did you report for work on that day? 349
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A. I got in about one o'clock or after one.

Q. Did you have any conversation with your fellow employees as to what happened that morning? A. No.

Q. When did you first hear of what took place at the conference that morning? A. Well, I had gone downstairs, and was ready to change for work when Jack Edelstein came down and he said that the fellows were supposed to go down to the attorney's office, and they were supposed to speak about it, the fellows who were picked for the union, and he said the fellows should go. Angie 350
and Bill and Gerry and I went, and Mr. Stoltman was there.

Q. Let us get their last names for the record. You went, Goshgarian, Munrett and Seminara? A. That is right.

Q. How did you go down? A. We took a taxicab to the subway and from there we went down on a train.

Q. With whom? A. Mr. Stoltman.

Q. Did any of the employees have a conversation with Mr. Stoltman on the way down? A. He was talking to some of them in the train and in the cab.
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Q. Do you recall what that conversation was? A. He 351
asked them what was the matter, and some of the fellows didn't want to say anything, and finally it came out in the train that we told him that we were not going to have the union. He asked us what was the matter, and we said the fellows did not want it. He said, "If you play smart, you can get a raise down there, if you take the union."

Q. And that was the substance of the conversation? A. That was it.

Q. When you came to the office of the attorneys did you attend the conference there? A. Yes.

352 Q. Who was present besides the four employees that you mentioned and Mr. Stoltman? A. There was Mr. Stoltman's associate.

Q. Mr. Hiller? A. Yes.

Q. Who else? A. Mr. Niemeyer, Mr. Goodfield, and Mr. Seligsberg and you were there, I think.

Q. And Mr. Hoppin was there? A. Mr. Hoppin was there.

Q. Now, did you and your fellow employees have any conversation with Mr. Stoltman relating to whether you wished to join the union or not? A. We had told him

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that we did not want the union, that the fellows had decided against it.

Q. What did Mr. Stoltman say? A. He said that he wanted the union, because he had cards, signed cards.

Q. Do you recall what Mr. Stoltman said before he left the meeting? A. Yes, he said something. He had gotten mad and he said something about striking at Medo and the customers or something like that.

* * * * *

354 Q. (By Mr. Friedman) Did the employer discuss with you, before the meeting on June 7, or at any time thereafter, through the conference of June 9, the union activities?

* * * * *

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The Witness: No.

Mr. Friedman: That is all.

CROSS EXAMINATION:

Q. (By Mr. Reitman) Did you speak with everybody on June 7, the morning of June 7? A. Everybody that was working downstairs at the time. 355

Q. About how many people did you speak to? A. Oh, about twelve or more.

Q. About twelve people? A. Yes.

Q. Did that take in all the employees in the basement? A. No, some were on vacation or working on a truck or running errands.

Q. And those that were working on a truck or were on vacation, had they signed application cards for the union? 356
A. That I could not say. I don't know.

Q. Do you know how many people signed the application cards for the union? A. Well, at the meeting I attended, everybody was supposed to have signed, and there were about eighteen there.

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Q. How many people all told worked in the basement? A. I can't say on that, unless I figured out who was working down there.

Q. You only approached about twelve people out of the eighteen people? A. That is right. 357

Q. Before you went to see Mr. Hoppin? A. Yes, sir.

Q. When you first went upstairs to speak with Mr. Hoppin in the morning of June 7, did you tell Mr. Hoppin what you wanted to talk to him about? A. No, I just told him that the fellows would like to speak to him, if he had time.

Q. And you went back at one o'clock? A. That is right.

358 Q. About how many went back at one o'clock? A. About twelve, all the fellows I had spoken to.

Q. All the fellows who belonged to the union did not go up at one o'clock, did they? A. No, some of them were out.

Q. You had no authority to negotiate for these men who were out, did you? A. Well, it was understood that these fellows that I mentioned, Mr. Seminara, Mr. Goshgarian and Mr. Munrett, it was agreed that they would represent the fellows.

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359 Q. Were they to represent the fellows as members of the union? A. Yes.

Q. They were not to represent the fellows as individuals, were they? A. Downstairs it was understood that they were.

Q. But these six people had no representation at this meeting with Mr. Hoppin, did they?

Mr. Friedman: I object to that question as not in accordance with the testimony of the witness. He said that they did have.

Trial Examiner Guffey: Overruled.

360 The Witness: What is the question?

Trial Examiner Guffey: Read the question, please.

(Question read.)

The Witness: No, not at the time.

Q. (By Mr. Reitman) And did you negotiate wage increases for these six people? A. Yes.

Q. Six people were members of the union at the time that you arranged for the increases with Mr. Hoppin?

Trial Examiner Guffey: What six people are you talking about? 361

Mr. Reitman: The six people of the union who were not present at the meeting with Mr. Hoppin.

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Trial Examiner Guffey: Who are they?

Mr. Reitman: I will withdraw the last question.

Q. (By Mr. Reitman) So that the men who were not present at the meeting with Mr. Hoppin were either out working or away on vacation? A. Yes, sir.

Q. Who were they? A. There was Mervin Sussman, I 362
think, Al—I do not believe I know his last name.

Q. Petrone? A. Petrone and Edward Schroeder.

Q. Edward Schroeder? A. Yes, sir.

Q. Is it Schroeder or Schroer? A. Schroeder.

Q. Schroeder? A. Yes, sir.

Q. All right. A. I don't know, but I think Nick Pergola was out.

Q. Nick Pergola? A. I think so but I am not sure. That is about all.

Q. You cannot remember the names of any others? A. No. 363

Q. But there were about two or three others? A. I think so.

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Q. Did you sign a card designating the union as your bargaining agent? A. Yes.

Q. Did all these other eighteen men sign cards designating the union as their bargaining agent? A. I think so.

Q. Did you contact Mr. Stoltman on June 7, when you decided to speak with Mr. Hoppin? A. No.

364 Q. Did you tell Mr. Hoppin that you were member of the union? A. No.

Q. You told Mr. Hoppin that you assumed that he knew about the union? A. Yes.

Q. Did Mr. Hoppin ask whether you were members of the union? A. No.

Q. Did you indicate to Mr. Hoppin that you were resigning from the union?

Mr. Friedman: I object to the form of the question.

Trial Examiner Guffey: Overruled.

365 The Witness: No.

Q. (By Mr. Reitman) Bill Goshgarian was the first one whom you approached about going up to see Mr. Hop-

pin. Is that right? A. That is right.

Q. Will you repeat, giving us your best recollection, the exact conversation which you had with Bill Goshgarian? A. Well, I got hold of Bill, and I walked out in the hall with him, and I said, "What do you think of the union, Bill?" And he said, "I don't know." He said, "In some ways it is good, and in some ways it is bad." I said, "I was talking

366 to my folks last night and my mother says that the way things are running it is all right, and the union couldn't give me much more excepting a raise, and she says, 'why don't you ask for a raise and decide for yourselves.'" So I asked him, I says, "Why did you join the union"? He said, "Well, the same reason that you did." He says, "Because most of the fellows wanted it." So he said, "Dan is all hopped up about it, because he is only a kid, and he figures he can make a lot of money." I said, "I am going to get hold of a couple of fellows and see what we can do about it." I

said, "Maybe we can get the raise without the union, and we will be better off," and he said, "All right," and I went back to work, and I spoke to Danny Mathews. 367

Q. When you spoke to Bill, did you discuss what you

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would do, if you could get a raise through Mr. Hoppin? A. Yes, I said, "We will go up and see if we can get a raise," and I said, "If we don't get a raise, we won't bother to do nothing about it."

Q. What is that? A. I said, "If we don't get a raise, we won't bother to do nothing about it."

Q. You would stick with the union? A. Yes. 368

Q. Who is Jack Edelstein? A. He is the assistant manager.

Q. At what time did you have a conversation with Jack Edelstein on Monday, June 9? A. It was about one o'clock or a little after one o'clock, I believe.

Q. Was it before two? A. I think so.

Q. Are you sure that it was before two o'clock? A. Well, I couldn't say offhand yes or no, because I had just got back from the Draft Board, and I had finished lunch before I came in.

Q. Do you recall whether it was about two-thirty or 369 three o'clock? A. I don't remember just what it was.

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Q. You are not sure of the time? A. No, I am not positive of the time.

Q. Did he tell you what you were supposed to go to the lawyer's office for? A. No, sir, he just said that we would have to go down to the lawyer's office.

Q. Did you ask him why you had to go to the lawyer's office? A. No, I figured it was just a chance of getting off the rest of the day, and I didn't ask any questions.

370 Q. What is that? A. I didn't ask any questions because he told me to go out there.

Q. Did you talk to the rest of the boys about going to the lawyer's office? A. Well, they were all getting dressed at the time. I mean, they were just coming around. He had spoken to us down there and told the fellows to go on.

Q. Mr. Stoltman was in the basement? A. That is right, and he was taking the fellows off of work.

Q. Did you have a conversation with Mr. Stoltman in the basement? A. No.

371 Q. Would you say that you said nothing to him at all?

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A. No.

Q. Didn't you tell Mr. Stoltman then that you had already gotten your wage increase and didn't need the union? A. No.

Q. When did you tell him that? A. I didn't tell him that. I didn't speak to him.

Q. Did any of the boys tell him that? A. A few of them did.

Q. When did they say that to him? A. On the way
372 down in the train.

Q. They told him they didn't need the union any longer because they got their wage increases? A. No.

Q. What did they tell him? A. They told him that they were not going to stick by the union but were going to drop the union.

Q. Did they tell him why? A. They said they didn't want it, that is all. The fellows did not want the union.

Q. Did they tell him why the fellows did not want the union? A. That is about the only reason, because most of the fellows did not want it.

Q. Who were the fellows who spoke to Mr. Stoltman? 373
(189)
A. He was speaking to Gerry Munrett, and I think Angelo Seminara.

Q. Did you boys tell him about your meeting with Mr. Hoppin? A. I didn't speak to him, but I think the other fellows were talking to him.

Q. You don't have a very good recollection of what happened on the train, do you?

Mr. Friedman: I object to that?

Trial Examiner Guffey: Overruled.

The Witness: No, because at the time I was not 374
listening to them, but I was kidding around with one of the other fellows.

Q. So that you don't know whether he told Stoltman, that is, whether they told Stoltman that they did not need the union because they had already gotten their wage increases?

Mr. Friedman: I object to the question on the ground that that is not what this witness testified. He testified directly to the contrary.

Mr. Reitman: He just testified—

Trial Examiner Guffey: Mr. Reitman is not 375
pretending to quote the witness' testimony, but is merely ask a question.

Objection overruled.

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Mr. Friedman: I further object to the question as leading. He objected to my questions as leading.

Trial Examiner Guffey: I sustain objections to leading questions on direct but certainly not on cross examination. Objection overruled.

376 Q. (By Mr. Reitman) Will you answer the question? A. At the time we did not take the union seriously, and I heard what they were speaking about, and we were kidding around by ourselves.

Q. Did you hear everything which was said? A. Not everything which was said but a few things.

Q. So that you don't know whether they did not tell him that they left the union because they got the wage increases? A. No.

Q. How many union meetings did you attend? A. One.

Q. When was that meeting held? A. I believe it was
377 the second meeting.

Q. Was that the 29th of May? A. That was.

Q. That was the meeting which you attended, the 29th of May? A. Yes.

Q. When there were eighteen people present? A.

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That is right.

Q. Where was the meeting held? A. Over at 54th Street, at the Union office, I think it was.

Q. What time was the meeting held? A. It was after work, about six o'clock.

378 Q. Was that the meeting at which you prepared your wage scales? A. That is right.

Q. Is that the meeting at which the negotiating committee was elected? A. Yes, sir.

Q. That committee was chosen by the people who signed the cards for the union? A. Yes.

Q. That committee was not appointed by Stoltman, was it? A. No.

Q. Were you present at the meeting on May 21st? A. No.

Q. Do you remember everything that happened at that meeting on May 29? A. Pretty near. 379

Q. Were you kidding around with a couple of fellows at the meeting of May 29? A. No. They were kidding

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around before he spoke, but that was all.

* * * * *

Q. (By Mr. Reitman) Were any of the other employees of Medo who did not work in the basement mentioned at that meeting? A. No, I don't believe so.

Q. You don't believe? A. I don't believe anybody was mentioned besides those who were working down- 380
stairs.

Q. What is that? A. Nobody but those working downstairs.

Q. What do you mean by you did not believe so? A. A. I didn't think he did.

Q. You are not sure about it, are you? A. I am sure of it.

Q. Then you don't mean that you did not believe they

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were mentioned? A. That was just a phrase I used. That is all.

381

Q. I see. Were you interested in the union at that time? A. No, not necessarily.

Trial Examiner Guffey: At what time, Mr. Reitman?

Mr. Reitman: At the time of the meeting of May 29.

The Witness: No, not necessarily.

Q. (By Mr. Reitman) But you still attended the meeting? A. Yes, because it was for the benefit of the boys

382 who really wanted a union, and there were quite a few of them who only attended for that reason.

Q. How long had you been working for the company? A About five years.

* * * * * *

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RE-DIRECT EXAMINATION:

Q. (By Mr. Friedman) Just one question. Did the union call any meetings of the members after the meeting which you attended on May 29? A. No.

Mr. Friedman: That is all.

383 Trial Examiner Guffey: Just a moment.

Mr. Friedman: Excuse me.

Trial Examiner Guffey: Was June 7 the first time you had spoken to Mr. Hoppin about a wage increase?

The Witness: Yes, sir.

Trial Examiner Guffey: That is, a group of employees which went to him on that day?

The Witness: Yes.

Trial Examiner Guffey: On that day you went alone first and told him that the employees wanted

384 to see him?

The Witness: Yes, sir.

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Trial Examiner Guffey: And later that same day a group of you went to talk to him?

The Witness: Yes.

Trial Examiner Guffey: What day was it that you were informed that you were going to get a raise in wages?

The Witness: I think it was a week after.

Trial Examiner Guffey: What day of the week? 385
The Witness: On a Saturday.
Trial Examiner Guffey: Did you receive the raise, or were you informed before you received it that you were going to get the raise?
The Witness: He just said he would talk it over with Mr. Niemeyer.
Trial Examiner Guffey: Who said that?
The Witness: Mr. Hoppin.
Trial Examiner Guffey: When did he tell you that?
The Witness: I heard it indirectly through one 386
of the fellows downstairs. I believe it was on a Wednesday that they received the slips.
Trial Examiner Guffey: The Wednesday after the Saturday?
The Witness: That is right.
Trial Examiner Guffey: Did you receive one of those slips?
The Witness: Yes, sir.

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Trial Examiner Guffey: Do you recall what it said on the slip?
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The Witness: It said, "Starting Saturday your pay will be increased to twenty-one dollars."
Trial Examiner Guffey: That is what your said, but it would vary, so far as the amount is concerned for particular individuals?
The Witness: Yes, sir.
Trial Examiner Guffey: Will you tell me as nearly as you can recall what you employees said to Mr. Hoppin on June 7, when you went to him to talk about wage increases?

388 The Witness: When we spoke to him about the raise, we told him what each department wanted, and that the errand boys wanted fifteen dollars, and that the stock clerks, the fellows who were there longer, wanted twenty-three dollars; and the fellows who were working in the order department wanted eighteen dollars; and he said he would see what he could do, that is about all.

Trial Examiner Guffey: Will you state whether or not that group of employees told Mr. Hoppin they did not want the union any longer?

389 The Witness: Well, when they first went in there, I spoke to him about it, and told him, "I suppose you have heard about the union," and he said he does not want to know anything about it. I told him that

the fellows did not want the union; that all they wanted was the raises, and that we had come up to ask for the raises.

Trial Examiner Guffey: Will you state whether or not Mr. Hoppin said at that meeting with you employees on June 7, "It is all right if you want to

390 join the union, but if you don't, it is better yet," or anything to that effect?

The Witness: No.

Trial Examiner Guffey: Your answer is "No," that he didn't say anything like that?

The Witness: He didn't say anything like that.

Trial Examiner Guffey: That is all, thank you.

(Witness excused.)

* * * * *

ANGELO SEMINARA resumed the stand and testified further as follows: 391

Trial Examiner Guffey: You were sworn before, Mr. Seminara. You may be seated.

Q. (By Mr. Reitman) Mr. Seminara, who saw Mr. Hoppin on June 7? A. Well, as far as I remember, I had said it was just a committee.

(198)

Q. Your recollection is that it was just the committee who saw Mr. Hoppin? A. I am definitely sure Frank Bianco was there at the time. He was mentioned before, because he was up to see Mr. Hoppin on some business, 392 and John Granito was there. Those I remember.

Q. But on November 14, when you spoke of Mr. Livingston, you told him it was just the committee who saw Mr. Hoppin? A. So far as I could remember.

Q. That was your recollection in November? A. That is right.

Q. Have you discussed this matter with anybody since November? A. I have not.

Q. Did you discuss the facts with Mr. Hoppin? A. No, sir.

Q. Did you discuss the facts with Mr. Friedman? A. 393 No, sir.

Q. Did you give a statement to Mr. Friedman about what happened? A. At the lawyer's office, if I remember correctly.

Q. When was that? A. With the union officials.

Q. With the union officials? A. Yes.

(199)

Q. I am talking about since November 14, 1941, have you given Mr. Friedman a statement of what happened? A. Not that I remember, no.

394 Q. Is this your signature on Board's Exhibit No. 11 for identification? A. That is the one I am talking about. That was taken at the lawyer's office.

Q. And that is the statement which you gave Mr. Livingston of the National Labor Relations Board? A. That was taken at my house.

Q. That was taken at your house? A. May I see it please?

Q. Surely. (Handing paper to witness.) A. This is the one Mr. Livingston gave me, and it was taken at my house.

395 Q. Did Mr. Livingston visit your home? A. I do not know his name, but two fellows came over to my house about five or six months ago.

Q. But that is the statement which you signed for them? A. Yes.

Mr. Reitman: I offer this in evidence.

Trial Examiner Guffey: Let me see it, please?

Mr. Friedman: Are you offering that?

(200)

Mr. Reitman: That is Mr. Seminara's statement.

396 Mr. Friedman: I object to that statement on the same ground that I objected to the statement of Mr. Goshgarian.

Trial Examiner Guffey: Objection overruled. It may be received as Board's Exhibit No. 11.

(Thereupon the document above referred to previously marked for identification as Board's Exhibit No. 11 was received in evidence.)

Mr. Reitman: That is all.

CROSS EXAMINATION:

Q. (By Mr. Friedman) Mr. Seminara, did you just tell Mr. Reitman that you did not discuss this case with anyone since November 14, 1941? Is that right? A. Except I discussed it with Mr. Hoppin, when we asked him for a raise. 397

Q. I am talking about November 14, 1941. That discussion with Mr. Hoppin was on June 7. Is that right? A. That is right.

Q. Didn't you have a talk with Mr. Reitman a few days before this hearing at the Hotel Wentworth? A. Yes, sir.

Q. And that was when Mr. Reitman came up to see you, was it not? A. Yes, sir. 398

Q. Was he accompanied by any union official? A. Yes.

(201)

Q. Who? A. He was accompanied by Mr. Hiller.

Q. And they both took you to the Hotel and talked the case over with you, did they not? A. That is right.

Q. Did you sign a statement of what took place at the conference with Mr. Hoppin on June 7 at the conference which you had in the attorney's office on June 9 with the union officials and with the officers of Medo? A. I did.

Q. And at that time did you read the statement which you signed? A. I think I did, yes, sir. 399

Q. And was that statement a correct statement of what took place on June 7? A. I think it was.

* * * * *

Q. (By Mr. Friedman) I show you this statement and ask you if your signature is affixed to it? A. Yes.

(202)

Q. Now, read that statement.

* * * * *

400 Mr. Reitman: I object to the witness reading the statement at this time until counsel has first examined him for the purpose of determining whether his memory is exhausted.

Mr. Friedman: I don't understand that objection at all, when I have asked the witness to read the statement.

(203)

Mr. Reitman: For the purposes of refreshing his recollection.

Mr. Friedman: I didn't say that.

401 Mr. Reitman: I object to the question on the ground that there is no basis for asking the witness to read the statement at this time.

Mr. Friedman: It is offered in evidence as a contradiction of what the witness testified to on direct examination.

* * * * *

Trial Examiner Guffey: Let us mark it for identification so that the witness will know what we are talking about.

Objection overruled.

402 (Thereupon the document above referred to was marked as Respondent's Exhibit No. 2 for identification.)

Mr. Reitman: Mr. Examiner, prior to the witness having an opportunity to see the Exhibit, it has not been properly identified, and I ask an opportunity to examine the witness with respect to the execution of the statement and so forth.

(204)

403

Trial Examiner Guffey: Just a moment, counsel. I will change my ruling and sustain the objection, and ask for the Respondent to exhaust the witness' present recollection as to what he stated at that time, before showing him the statement.

Mr. Friedman: I don't understanding that ruling,

(205)

your Honor. Am I to understand that the statement is not admissible in evidence as a contradicting statement as to what the witness testified to on direct examination, provided I show that it was signed by the witness; that he read the statement before he signed it, and saw how the statement was prepared? 404

Trial Examiner Guffey: I will admit it in evidence for the purpose of attempting to impeach this witness.

Mr. Friedman: That is right.

Trial Examiner Guffey: But I would like to hear what the witness has to say about it before showing him the statement.

Mr. Friedman: I will be glad to do that.

405

Q. (By Mr. Friedman) Do you recall signing this document, Respondent's Exhibit No. 2 for identification, on June 9, 1941? A. That is my signature, yes.

Q. Where did you sign it? A. At your office.

Q. Was it dictated by Mr. Seligsberg in your presence? A. It was.

Q. And were the other three employees present when it was dictated? A. Yes.

Q. Did you hear me dictate that statement?. A. I did.

406 (206)

Q. After the statement was dictated, was it transcribed by the stenographer the same afternoon? A. Yes.

Q. And after it was transcribed, were you shown a copy of the statement? A. I was.

Q. And did you read the statement? A. I did.

Q. Before you signed it? A. Yes, sir.

Q. Did you see the other employees sign their signatures? A. I did.

Q. Are those their signatures? A. Yes.

Q. That is Mr. Bruchbacher's?

407 • • • • •

The Witness: Yes, sir.

Q. (By Mr. Friedman) You saw Mr. Bruchbacher, Mr. Munrett and Mr. Goshgarian sign it? A. I did.

Q. And this statement, when you read it, did it contain

(207)

a correct statement of what took place at the meeting of June 7, 1941 with Mr. Hoppin? A. It was the truth, so far as I know.

Q. At that time it was your best recollection? A. Yes, sir.

408 Mr. Friedman: I offer the statement in evidence.

Trial Examiner Guffey: May I have an opportunity to look at it?

Mr. Reitman: First, your Honor, I would like an opportunity to cross examine the witness on this statement.

Trial Examiner Guffey: Yes, sir.

Q. (By Mr. Reitman) Who prepared this statement? A. It was not prepared.

Mr. Friedman: I object to that. It has already been gone into. This is the Board's witness. He

testified that the statement was dictated by Mr. Seligsberg and it was transcribed and submitted to him and he read it. I do not think Mr. Reitman has a right to cross examine his own witness, and I object to such testimony. 409

Trial Examiner Guffey: Overruled. Proceed.

Q. (By Mr. Reitman) Who prepared this statement? A. I don't know what you mean by "prepared."

Q. Who dictated this statement? A. Mr. Seligsberg.

Q. When did Mr. Seligsberg dictate this statement?

(208)

A. On June 9. 410

Q. At what time? A. The time I could not be sure of.

Q. Was it in the morning? A. No, I don't think it was morning. I am pretty sure it was during the afternoon.

Q. Early afternoon? A. I couldn't say the time exactly.

Q. Was it late afternoon? A. I couldn't say.

Mr. Friedman: Who was present when this statement was written?

The Witness: There was myself, Mr. Bruchbacher, Mr. Munrett, Mr. Goshgarian, [redacted] Hoppin, Mr. Niemeyer, Mr. Goodfield and Mr. Stoltman, Mr. Hiller, Mr. Friedman and Mr:— 411

Q. (By Mr. Reitman) How did Mr. Seligsberg dictate this statement?

Mr. Friedman: I object to the question. I do not know just what he meant by that.

Trial Examiner Guffey: Will you clarify that?

Q. (By Mr. Reitman) Did you give Mr. Seligsberg any information from which to dictate this statement? A. Well, he asked us questions.

412 Q. What did he ask you? A. Everything that is con-
(209)
tained in that.

Q. Do you recall what he asked you? A. I can try. He asked us all about the meeting with Mr. Hoppin; why we went up there, and how come we decided that we didn't want to join the union; and we told him all about it and we had talked it over with the fellows, and that if we could get a raise from the firm, we would much rather not join the union. For myself personally, I had heard stories about the union that I didn't like so very much.

413 Q. How long did it take to dictate this statement? A. I don't know.

Q. Who typed this statement? A. A stenographer.

Q. Who was the stenographer? A. I don't know.

Trial Examiner Guffey: What is the purpose of this line of questioning, Mr. Reitman?

Mr. Reitman: For the purpose of proving that he does not know who transcribed this statement; and I am approaching the point of determining whether this statement actually reflects the information which he gave.

414 Trial Examiner Guffey: What is the difference who transcribed it, if he read the statement and he said it represents what he said?

(210)

Mr. Reitman: I will withdraw the question.

Q. (By Mr. Reitman) Was this statement typed at the same time it was dictated?

Mr. Friedman: I object to the question.

Q. (By Mr. Reitman) (Continuing) The same day?

Trial Examiner Guffey: Overruled.

The Witness: I got a copy of it the same day, yes.

Q. (By Mr. Reitman) When did you sign it? A. While we were in the office. 415

Q. What were you doing in between the time it was dictated and the time it was returned to you?

Mr. Friedman: I object to that question.

Trial Examiner Guffey: Sustained.

Q. (By Mr. Reitman) Tell us some more about what you told Mr. Seligsberg to put in this statement for you to sign?

Mr. Friedman: I object to that question also. It has nothing to do with the execution of the document, and that is all that he is seeking to elicit on this examination. 416

Trial Examiner Guffey: Overruled.

The Witness: I don't know. I can't exactly remember everything, I told him—it is so long ago—but I do remember one thing clearly and that is that I myself remarked to Mr. Hoppin; that we had come to his office on our own accord, and no one had questioned us or no one had spoken to us about this union business as to whether we should join or we should

(211)

not join. I think myself or someone else also remarked, or when we left Mr. Hoppin's office, about job security; whether in the event we did receive our raise, one or two at a time, we would be fired. Mr. Hoppin remarked, "Well, I don't think you know me so very well. Once you leave this office, the whole matter will be forgotten." 417

Q. (By Mr. Reitman) You said just a moment ago in telling us what you told Mr. Seligsberg that when you talked to Mr. Hoppin, you told him that you did not particularly care for the union, and if they would give you the

418 raise, you would drop out? A. I didn't tell that to Mr. Hoppin.

Q. Just a few minutes ago, in telling me what you said to Mr. Seligsberg that you said when you went into Mr. Hoppin you would prefer to have a non-union shop, and that if the company would give you a wage increase— A. I said that—

Mr. Friedman: Now, I object.

Mr. Reitman: I have not finished my question.

Mr. Friedman: He was answering, and that is why I interrupted.

419 Mr. Reitman: Read the question, Mr. Reporter, please.

(Question read.)

What did the witness start to say?

Mr. Friedman: I object to what he started to say,

(212)

and I object on the ground that the purpose of this examination is merely to investigate or to ask questions about the execution of this particular document.

Trial Examiner Guffey: The objection is sustained.

420 I think you should confine the examination to the circumstances surrounding the execution of the document.

Mr. Reitman: I have just one more question.

Q. (By Mr. Reitman) Were Mr. Stoltman and Mr. Hiller present in the room at the time that this statement was prepared? A. No, I don't think they were.

Mr. Reitman: That is all.

Mr. Friedman: I offer it in evidence.

Mr. Reitman: I object to it going into evidence on the ground that the witness' independent recollection

has not yet been exhausted in accordance with your ruling you made just before, Mr. Trial Examiner. 421

Trial Examiner Guffey: Overruled.

(Thereupon the document above referred to previously marked for identification as Respondent's Exhibit No. 2 was received in evidence.)

Q. (By Mr. Friedman) Now, did the union call any meetings of members after May 29, 1941? A. I don't know whether they did.

Q. Did you attend any meetings of the union after May

(213)

1941? A. I attended two union meetings, but the dates I don't know. 422

Q. Did you attend any union meetings after the conference on June 19, 1941? A. No, I did not.

Q. Were union meetings called after that date? A. Well, I received a letter at my home.

Q. From whom? A. From the union that Mr. Stoltman represents.

Q. From the union or from the National Labor Relations Board? A. No, not from the National Labor Relations Board.

Q. Do you mean Mr. Stoltman wrote you a letter? A. I don't know if he wrote it himself, but I did receive a letter directing me that there would be a meeting, and if I wanted to attend, I should go to—I don't remember the address, but I think I still have the letter at home. 423

Q. But you did not attend any such meeting? A. No, I did not.

Q. Do you know whether any employees at Medo attended any meetings of the union after June 9, 1941?

Mr. Reitman: Objection.

424 Trial Examiner Guffey: Let him answer, if he knows.

The Witness: No.

Q. (By Mr. Friedman) And on June 9, 1941, you told

(214)

Mr. Stoltman that you did not want the union to represent you? A. That is right.

* * * * *

Q. (By Mr. Friedman) Just let me ask one more question. Is Board's Exhibit No. 11 in your handwriting? A. It is not my handwriting.

425 Mr. Friedman: That is all.

RE-DIRECT EXAMINATION:

Q. (By Mr. Reitman) Do you remember Mr. Livingston giving you this paper and asking you to read it? A. I do not know who this Mr. Livingston is.

Mr. Reitman: Will you please stand up, Mr. Livingston?

(Thereupon Mr. Livingston arose.)

Q. (By Mr. Reitman) This gentleman on my right. Do you remember him? A. He looks familiar, yes.

Q. Is he the person that you spoke with when you exe-
426 cuted this statement? A. He was out to my home one night.

Q. Did he write out what you told him to write out? A. Yes.

Q. And exactly what you told him to write out is con-

(215)

tained here? A. That I don't remember.

Q. Supposing you read that again and then tell me. A. (Reading.)

Mr. Reitman: I will withdraw the question.

Q. (By Mr. Reitman) Was Mr. Hiller present when you

and I spoke the other day? A. He was there, but he was not near us. 427

Q. I asked Mr. Hiller to leave the two of us alone, so that we could talk it over together? Is that right? A. That is right.

Mr. Friedman: I object to the form of the question.

Trial Examiner Guffey: Sustained.

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(216)

(Witness excused.)

Trial Examiner Guffey: Mr. Reitman, I would like to have a little evidence on the jurisdictional limits of the union, and now might be a good time, while Mr. Stoltman is here. It will be very, very brief. 428

AL STOLTMAN resumed the stand and having been previously sworn, testified further as follows:

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Direct Examination:

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Q. (By Mr. Reitman) Mr. Stoltman, what is the—

Trial Examiner Guffey: When I say jurisdictional limits of the union, I mean, the American Federation of Photo Employees Union, Local 21314, this particular local.

Q. (By Mr. Reitman) What is the jurisdiction of your local? A. I could best explain that by explaining the situation of Federal Charters under the American Federation of Labor.

430 Q. We want to restrict it to your local, if you can. A. Ours is a Federal Local.

(217)

Q. Just a moment. Restricted to your local. A. As a Federal local, we were chartered originally in October of 1937 to combat Local 415 of the CIO, and it goes into any and all fields for trades, and we were given the broadest jurisdiction to take in anything and all in the photographic industry represented in our Local, including manufacturers of supplies, photographs, photo finishers, commercial photographers, portrait photographers, and so forth.

431 Q. Do you have jurisdiction over retail and wholesale photographic supply firms? A. Yes, sir.

Q. From whence does that jurisdiction emanate? A. That jurisdiction emanates from Washington.

Q. Is that granted to you under your charter? A. Yes.

Q. Do you have jurisdiction over the shipping clerks, receiving clerks and order clerks and stock clerks? A. Yes, we have many of them as members of the union right now.

Q. Do you have contracts including any shipping clerks, receiving clerks and order clerks? A. I do.

432 . . . . . .

(218)

Trial Examiner Guffey: I do not care for so much detail on this. Let me ask one question, and I think my purpose will be satisfied.

Does Local 21314 admit to membership employees of employers other Medo Photo Supply Corporation?

The Witness: Yes.

Trial Examiner Guffey: That local covers several employers?

The Witness: Employers? 433

Trial Examiner Guffey: Yes, sir.

The Witness: Do you mean different shops?

Trial Examiner Guffey: It covers the employees of several employers?

The Witness: Oh, yes.

Trial Examiner Guffey: You do not have a separate local for each employer?

The Witness: No.

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(219) 434

MERVIN SUSSMAN was thereupon called as a witness by and on behalf of the National Labor Relations Board and, having been first duly sworn, was examined and testified as follows:

Direct Examination:

Trial Examiner Guffey: State your name and address, please.

The Witness: Mervin Sussman, 2084 Pacific street, Brooklyn.

Q. (By Mr. Reitman) In May of 1941 by whom were you 435 employed? A. Medo Photo Supply Company.

Q. What was your job? A. In May I was a truck helper.

Q. Were you present at a union meeting on May 21st? A. Yes, sir.

Q. What took place at the meeting? A. We had a few fellows at the meeting, and Mr. Stoltman passed out cards for us to sign and return to him.

Q. Did anything else take place at the meeting? A.

436 Well, we discussed what we were doing, signing the cards, that is about all.

(220)

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Q. (By Mr. Reitman) Do you remember anything else that occurred at the meeting? A. Well, Mr. Stoltman explained that when we signed these cards, that we were making an application for the union, and appointing them as a bargaining agent for us.

Q. Anything else? A. That is all I can remember.

Q. Was anything said at that time by either the em-
437 ployees or by Mr. Stoltman concerning which employees of Medo could join the union?

Mr. Friedman: I object to the question as leading.

Trial Examiner Guffey: Overruled.

(221)

The Witness: No, not at that time.

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Q. (By Mr. Reitman) Did Mr. Stoltman say anything about dues?

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438 (223)

The Witness: Yes, he said we did not have to pay dues until we drew up a contract. If we drew up a contract, and it was settled with the company, we would not have to pay dues until that was done.

Q. (By Mr. Reitman) Did he explain his purpose in obtaining the cards?

Mr. Friedman: I object to the form of the question.

Trial Examiner Guffey: Sustained.

Q. (By Mr. Reitman) Was there any discussion about the cards? 439

Mr. Friedman: I object to the question as leading.

Trial Examiner Guffey: Overruled.

The Witness: Yes. He said that the purpose of the cards was to protect us, and he said that the reason that we signed them was because there was some law covering it; that in case we were fired because of union activities, these cards would protect us.

Q. (By Mr. Reitman) Was anything said about who could apply for membership in this union? 440

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(224)

The Witness: No, not at that time.

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Q. (By Mr. Reitman) Mr. Sussman, in answer to a previous question you said "not at that time", was anything mentioned about who could apply for membership in the union. What time was this discussed? A. Sometime in the past, when Mr. Stoltman said—

Mr. Friedman: What time? Just answer the question, Mr. Sussman. What time was that? 441

The Witness: I think it was about two weeks—I am not certain about the time, but it was not at

(225)

that meeting, but it was brought up later, and they said later, about a week or two.

Trial Examiner Guffey: A week or two later than what?

The Witness: That meeting which we had at the union headquarters.

442 Trial Examiner Guffey: What was the date of that meeting.

The Witness: I can't say definitely, sir.

Trial Examiner Guffey: Proceed.

Q. (By Mr. Reitman) Was that about the 21st of May that Mr. Stolman told you this? A. No, the 21st was when we went up to the headquarters.

Q. Was it about the 29th of May? A. Around that time.

Q. What was said? A. He said that he was organizing the basement, because we—I think his words were that
443 we were the heart of Medo, because if at any time we would have to strike or anything like that, or if we had a strike, then the whole company would be tied up, because we control most of the shipping, receiving, order department and stuff.

Q. Did he discuss anything else pertaining to the same question? A. I don't exactly know what you mean.

(226)

Q. Did he discuss any other reasons why only the basement employees were being organized? A. Yes he said that he felt that we needed it more than anyone,
444 because we were being paid small salaries and different from the people working upstairs in the store. And that is about all.

Q. Did you discuss the type of work which you did?

Mr. Friedman: I ask Mr. Reitman to specify when these discussions took place.

Mr. Reitman: All of this as of the 29th.

Mr. Friedman: I object to the testimony as leading. Mr. Reitman has not attempted to ascertain what the witness' recollection of the matter is

and with whom the conversation took place, and what the conversation at that time was. 445

Trial Examiner Guffey: Overruled.

The Witness: He asked me what type of work I did and the type of work which was done upstairs, and I said that my work was mostly physical, I worked on the truck, and was a helper there, while upstairs they sold over the counter. That was the main difference between my work and the work upstairs.

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(230)

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Q. Did you receive a wage increase? A. Yes, sir.

Q. When did you receive a wage increase? A. I can't say the definite date.

Q. Was it in June? A. I think so.

Q. The early part of June? A. It was the early part, but I don't know a definite date on it.

Q. How were you notified of this wage increase? A. I got a slip in my envelope.

Q. Did you have a conversation with anyone before you got the slip in your envelope? A. Yes, I had a conversation with one of the boys in the morning, and he told 447

(231)

us—

Q. Who? A. I can't say definitely who it was.

Q. Do you have any recollection? A. I think it was Angelo, but I am not sure.

Q. Angelo who? A. Angelo Seminara.

Q. Angelo Seminara? A. Yes, sir.

Q. Where did this conversation take place? A. In the morning, when we came in.

448 Q. Where? A. Near the time clock.

Q. What morning? A. It was the beginning of the week that I got the raise.

Q. What was your conversation? A. He said that the fellows had gone up and talked to the boss and they had gotten their raises, and that they had decided that since we got what we wanted, we didn't need the union any more.

Q. Did you ask him about the increase? A. Yes, I was curious, because I was working on a truck, and I was not there to contact them all the time, and I asked him
449 what had happened, and he said they decided, since they got their raises, they didn't need it any more.

(232)

Q. Didn't need what? A. The union.

Q. What was the first time that you knew that the union was not going to represent the employes? A. They discussed it a few times before that, but that was the first time that I really knew that we were not represented by the union.

Mr. Reitman: That is all.

450 CROSS EXAMINATION:

Q. (By Mr. Friedman) Now, Mr. Sussman, Mr. Stoltman never told you before this meeting at the end of May that he wanted to organize only the shipping department employees? A. No.

Q. Did any of your fellow employees ever tell you that they refused to admit any of the employees of Medo, other than the employees of the shipping department, into the union? A. No.

Q. Did you ever tell that to anybody, that you would not want any other employee in Medo to become a member

of your union except the employees of the shipping department? A. No. 451

Q. Did you ever tell it to Mr. Stoltman? A. No.

Q. Did you ever hear anybody tell it to Mr. Stoltman? A. No.

(233)

Q. And you attended all the union meetings? A. I attended two of them.

Q. The meeting on May 21st? A. Yes, sir.

Q. And the meeting on May 29th? A. Yes, sir.

Q. You had just recently been employed by Medo in May 1941, is not that right? A. Yes. 452

Q. When were you employed, in April 1941? A. April.

Q. When in April, if you remember? A. I think it was the early part.

Q. And you were employed by—I will withdraw the question. If the records show that you were employed the week of April 25, 1941, would that refresh your recollection as to the exact date when you were employed? A. No, it would not.

Q. You were employed by Mr. Kaveles, were you not? A. Yes, sir.

Q. Who was Mr. Kaveles? A. He was the head of the shipping, receiving and order department. He was upstairs at that time. 453

Q. And he was the manager of the department, is not that right? A. Yes.

(234)

Q. And Mr. Schabin was the shipping clerk, was he not? A. Yes, sir.

Q. Now did Mr. Hoppin ever tell you not to join the union? A. No.

454 Q. Did Mr. Goodfield ever tell you not to join the union? A. No.

Q. Did Mr. Niemeyer ever tell you not to join the union? A. No.

Q. Did Mr. Edelstein ever tell you not to join the union? A. No.

Q. Did Mr. Kaveles ever tell you not to join the union? A. No.

Q. Now, are not all those the people who were in managerial and supervisory capacity at Medo, the heads of the concern and the chief managers? A. The chief
455 managers, yes, sir.

Q. Did Mr. Hoppin or Mr. Goodfield or Mr. Niemeyer try to dissuade you from joining the union? A. No, sir.

Mr. Friedman: That is all.

Mr. Reitman: That is all.

Trial Examiner Guffey: Thank you, Mr. Sussman.

(Witness excused.)

Mr. Reitman: Mr. Hoppin.

Mr. Friedman: Do you want a stipulation?

456 Mr. Reitman: Yes.

Mr. Friedman: You can use him, if you wish.

L. Schabin—

Trial Examiner Guffey: State what you are talking about, before reading the names.

Mr. Reitman: It is hereby stipulated that the following are a list of the employees working in the shipping, receiving and order department of the company as of the week ending May 25, 1941.

L. Schabin, L. Oliveri, H. Bernstein, L. Booton, W. Goshgarin, J. Seminara, R. Bruchbacher, J. Granito, G. Munrett, A. Seminara, E. Oliveri, S. Abelow, T. Valentine, S. Caracci, D. Matthews, H. Schroer, Ed. Schroeder, H. Addison, A. Petrone, Robert Ritchie, Murray Feinberg, Mervin Sussman Joseph Gorgonzola, William J. Koch, Nick Pergola, and Charles Kohler. 457

Trial Examiner Guffey: Now, will counsel stipulate that that list of employees, that is, all the employees in that list, are employees in the unit claimed by the union?

Mr. Reitman: I have just been speaking with Mr. Stoltman, who is more familiar with that firsthand than I am, and he advises me that out of that list of approximately twenty-five, only twenty were entitled to membership in the union, on the ground that approximately five had supervisory or semi- 458

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supervisory status.

We might be in a position to work out some sort of stipulation on it, and I will speak to counsel.

Trial Examiner Guffey: Let us do it outside the hearing room, Mr. Reitman. We have been taking an awful lot of time of the hearing working out stipulations. 459

Mr. Reitman: I offer in evidence the petition filed by the union in this cause, as you requested the other day.

Is there any objection?

Trial Examiner Guffey: The petition for certification?

460 Mr. Reitman: That is right.

Trial Examiner Guffey: It may be so marked.

(The document referred to was marked Board's Exhibit No. 12 for identification.)

Trial Examiner Guffey: Is there any objection to this exhibit?

Mr. Friedman: No.

Trial Examiner Guffey: It may be admitted as Board's Exhibit No. 12.

(The document referred to, previously marked for identification Board's Exhibit 12, was received

461 in evidence.)

Mr. Reitman: I offer as Board's Exhibit No. 13 a letter addressed to the National Labor Relation Board, attention Mr. Schatzow, from Mr. Friedman, attorney for the company.

Mr. Friedman: What is the date of the letter?

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Mr. Reitman: June 11th. This is in response to Respondent's Exhibit No. 1.

Trial Examiner Guffey: You have no objection to this letter?

462 Mr. Friedman: No, it was in answer to that letter.

Trial Examiner Guffey: It will be received as Board's Exhibit No. 13.

(The document referred to was marked Board's Exhibit No. 13 and received in evidence.)

* * * * *

Mr. Reitman: I now offer in evidence two photostatic sheets, being the payroll record of the company for the week ending June 6.

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Trial Examiner Guffey: You better have them identified in some way. 463

Mr. Friedman: I will stipulate that the two photostatic sheets constitute the payroll of the employees of Medo for the week ending June 6, 1941.

Trial Examiner Guffey: Those two sheets may be marked Board's Exhibit No. 14 for identification.

(The documents referred to were marked Board's Exhibit No. 14 for identification.)

Mr. Reitman: Any objection to these going in evidence?

Mr. Friedman: None at all. 464

Trial Examiner Guffey: They will be received.

(The documents referred to, previously marked for identification Board's Exhibit 14 were received in evidence.)

Mr. Friedman: Is that No. 14?

Trial Examiner Guffey: Board's Exhibit No. 14.

Mr. Reitman: That is all the Board has to offer.

Mr. Friedman: You were also going to stipulate with me that the last witness, Mervin Sussman left the employ of Medo on February 6, 1942, to join the air corps, and since then has been in the air corps as an aviation cadet. 465

Mr. Reitman: It is so stipulated.

Trial Examiner Guffey: What date was it?

Mr. Friedman: February 6, 1942, and that he is not now in the employ of Medo, and has not been in

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Medo's employ since February 6, 1942.

Mr. Reitman: It is so stipulated.

466 Trial Examiner Guffey: Gentlemen, I notice on Board's Exhibit No. 14, the first sheet, the year is not shown.

Mr. Friedman: June 6, 1941. Perhaps you might want to know what was in the portion that is blocked out. That is where the salaries of the officers of the corporation were shown, which were not deemed material.

Trial Examiner Guffey: The part that is blocked out at the top of the page?

Mr. Friedman: Yes, sir.

467 • • • • •

Mr. Reitman: I think we have submitted evidence

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on the supervisory capacity of one employee, Louis Schabin. So far as the others are concerned, the reason I did not offer any, I didn't feel that it was material on the question of majority, whether any of the number included in the 25 were supervisors or not.

Trial Examiner Guffey: Why?

Mr. Reitman: The cards submitted number

468 eighteen, and the list of the employees stipulated in the basement, or in the departments alleged by the union to be in its appropriate unit number 25. So that regardless of how many supervisory employees we had, it would not make any difference as far as the majority is concerned.

• • • • •

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Mr. Friedman: Have you rested now, Mr. Reitman?

Mr. Reitman: Except that I now move to conform the pleadings to the proof. This is solely for the purpose of correcting any inaccuracies in the spelling of names, dates, and so forth, and not for the purpose of introducing or including any new matter which may have arisen during the course of the hearing. 469

Mr. Friedman: If your motion is limited for the purpose of correcting any names which may appear in the complaint as being incorrect, based on the testimony, all right, but, in referring to dates, what dates do you refer to? I don't recall any dates in the complaint. 470

Mr. Reitman: I do not recall any specific dates, but it is a formal motion which is made at the close of every Board's case for the purpose of correcting any inaccuracies which may appear in the pleadings.

Trial Examiner Guffey: It is the customary motion made in all of our cases, and, as Mr. Reitman has said, merely for the purpose of correcting inadvertent and immaterial errors, such as spelling of names, places, and dates which may be off one or two days, and things like that. 471

Mr. Friedman: Limited to that extent, I have no objection.

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Trial Examiner Guffey: Motion granted.

You are resting now, except for the offering of Board's Exhibit No. 3, Mr. Reitman?

Mr. Reitman: Yes, sir.

Mr. Friedman: I now renew the motion which I made at the inception of the hearing, to dismiss

472 the charge and the complaint, on the ground that at the time that the charge was filed, the union did not represent any employees of respondent and, therefore, has no standing before the Board.

Trial Examiner Guffey: Motion denied.

Mr. Friedman: Mr. Seligsberg.

WALTER M. SELIGSBERG was thereupon called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

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Direct Examination:

Trial Examiner Guffey: Will you state your name and address, please?

The Witness: Walter M. Seligsberg, 1155 Park Avenue, New York.

Q. (By Mr. Friedman) What is your position, Mr. Seligsberg? A. Lawyer.

Q. How long have you been practicing law? A. 38 years, just short of 38 years.

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474 Q. In New York? A. In New York.

Q. And you have been admitted to practice before all the Courts of the State of New York? A. Yes.

Q. And the Federal Courts? A. Yes.

Q. Including the United States Supreme Court? A. Yes.

Q. Where is your office? A. 29 Broadway, Manhattan.

Q. And the name of the firm? A. Seligsberg, Friedman and Berliner.

Q. And at the time that the union sought to organize

Medo in May 1941, what was the name of the firm? A. Seligsberg & Lewis. 475

Q. Are you a stockholder of Medo Photo Supply Corporation? A. No.

Q. Do you have any financial interest in the corporation? A. No.

Q. You are counsel for the corporation? A. Yes.

Q. And you never had any financial interest in the corporation? A. Never.

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Q. Do you recall meeting with Mr. Stoltman and Mr. Hiller on June 5, 1941? A. I can only be sure of the date by reliance upon a memorandum. It was about that time. 476

Q. Where was that meeting held? A. In my office.

Q. Who were present? A. Mr. Stoltman, Mr. Hiller, Mr. Hoppin, I think; and you.

Q. Were Mr. Goodfield and Mr. Niemeyer also present? A. I really don't remember whether they were at the first meeting or not.

Q. What took place at that meeting? A. Well, I greeted Stoltman and Hiller. I had met Stoltman before in other matters. And there was some little talk about a hearing before the National Labor Relations Board, from which you had just come, and some discussion between you and Mr. Stoltman about whether the matter could be adjusted. 477

Q. That hearing to which you are referring is a hearing or a conference held at the Board a few days before? A. (No response.)

Q. Would it refresh your recollection if I showed you the entries on your notes? A. Yes, I can be more particular about dates and who were present those dates.

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* * * * *

Q. (By Mr. Friedman) Go ahead and tell us what took place at that meeting on June 5. A. Well, there was discussion of the proper unit for organization. There was discussion as to whether Mr. Stoltman's organization had a majority or not in the unit which they were claiming, and there was discussion as to what their demands were. I can only give you a summary recollection. What I said to Stoltman was that he and I had dealt before, and we had had no difficulties in conducting negotiations, and
479 that if he really represented a majority of the unit, and the unit were the proper unit for organization—

Q. Do you mean for bargaining? A. For bargaining; and their demands were not extraordinary demands, that we might be able to get together without spending a lot of

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time in hearings, establishing things which could be established outside. There was some discussion as to whether they really had a majority. I asked him if he wanted to tell us who the men were, and he said he thought that would be rather unfair and some advantage might be
480 taken of it, and we passed that by. There was a discussion of the unit, and I think that question took up most of the details on that. But we did not come to an agreement on the unit. That was a matter pending before this Board, as I understand it. Then there was a discussion as to whether or not they would tell us what their demands were. I said, "That is the crux of the matter. You say you have a majority, and if what you have asked is not absurd or extreme, if you have a majority, then maybe we can negotiate an agreement without wasting a lot of time, as we

have done in other matters." I think at that time he gave me a copy of their proposed agreement or demands, and we made an appointment to meet again a few days later, after we had had a chance to analyze what it was that they wanted. 481

Q. Did you meet again on June 9? A. We met again on a Monday afternoon, as I remember it, if that was June 9.

Q. That was June 9. Who was present at that meeting?

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A. At that meeting Mr. Niemeyer, Mr. Goodfield, Mr. Hoppin, Mr. Stoltman, Mr. Hiller—is that the name? 482

Q. Yes, sir. A. And four of the employees, and you and I, and I believe a stenographer part of the time, one of our office stenographers.

Q. What took place at that meeting? A. I think that I asked Mr. Stoltman and Mr. Hiller whether they still claimed to represent a majority of the employees. They had come in with the four employee representatives. They had come in together, as I remember it, and I understood that they had come down together. And I don't believe Mr. Stoltman or Mr. Hiller gave me a candid answer yes or no to that, but I think they said they were the bargaining representatives of the employees of that department. 483 I told him that the employees of that department had come to us in the intervening period, and told us that they did not want to be represented by a union, and that they wanted to do their own bargaining, and that some arrangement had been reached with them which was satisfactory to the men and satisfactory to the company, and that there did not seem to be very much more for us to discuss. Mr. Stoltman was very—I won't characterize it,

484 but he said that he thought that something underhanded had been done, and pressure had been brought to bear on

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those boys. That is the substance of it, and I am not trying to give the words. And I believe I asked them in his presence—

Q. Asked each of the four employees? A. Asked each of the four employees, whether anybody had come to them from the management, directly or indirectly, and asked them to abandon the union organization, and to negotiate separately. I believe I said to them that Mr. Niemeyer
485 and Mr. Goodfield and Mr. Hoppin had assured us that no such thing had happened, and that this had not come at their inspiration or suggestion, directly or indirectly, but that the men had come of their own accord; and that in so far as you and I were concerned, we did not have anything or would not have anything to do with any such underhanded efforts. These men each said that nobody had approached them. The tall young blond fellow—

Q. Bruchbacher? A. Bruchbacher, had come to Mr. Hoppin the preceding Saturday at their insistence, and I said they had talked the matter over amongst themselves.

486 Q. When you say "at their insistence", whose insistence do you mean? A. The employees' insistence, and not on any suggestion from the boss or from the employer. Mr. Stoltman, as I remember it, expressed his doubt of the truth of the statements, and said that they would pro-

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ceed to organize the company's employees. There was some talk about picketing, picketing customers and blacklisting the company. I think he was quite angry—well, I won't characterize what he said.

Q. What did Mr. Stoltman do then? Did he leave? 487
A. He and Mr. Hiller left.

Q. Did you dictate a statement of what took place at that meeting? A. I did.

Q. When? A. Then and there.

Q. In whose presence? A. In the presence of everybody who attended the meeting, as I recall it, except Mr. Stoltman and Mr. Hiller.

Q. And did you inquire of the employees who were present what had taken place at that meeting with Mr. Hoppin, before you dictated your statement? A. I did.

Q. And you dictated the statement as a result of the 488
information which they gave you? A. I did.

Q. And after you had dictated that statement in their presence, was it transcribed by your secretary? A. By somebody in the office. I presume by my secretary.

Q. Was the typewritten statement then given to you?

A. It was brought into the room, yes.

Q. In the meantime, all the employees and the other members who had attended the meeting remained in your office? A. All except Stoltman and Hiller, as I remember it.

Q. And when the statement was brought to you, did you 489
distribute the statement to all the people there? A. I don't remember whether I read it out aloud or handed copies around to read, or whether they read it among themselves.

Q. But all the persons at the meeting, exclusive of Mr. Stoltman and Mr. Hiller, either read the statement or had it read out aloud? A. I think everybody who signed it read it. I am pretty sure they did.

490 Q. And you asked them if that was a correct statement of what had taken place? A. I not only asked them that, but I told them not to sign anything which was not true, either about the meeting which was just over, or the purposes of the meeting; that it would not do them any good, or us any good, not to have the truth.

Q. Did they all sign it? A. I think they all signed it.

Q. I show you Respondent's Exhibit No. 2, and ask you if that contains the signature of all persons present

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and who attended the conference on June 9? A. Yes.
491 I think there were four employee representatives there, and there are four signatures of men who were employed there. I think everybody who was at the meeting signed.

Trial Examiner Guffey: Do you know the names of the four employees?

The Witness: Yes, I know their names.

Bruchbacher; Ray G. Bruchbacher, Gerard Munrett, Angelo Seminara and William Goshgarian.

Mr. Friedman: Your witness.

CROSS EXAMINATION:

492 Q. (By Mr. Reitman) Mr. Seligberg, do you hold any office in the Medo Photo Supply Corporation? A. Yes, I am the secretary.

Q. You are the secretary? A. I think I am still secretary. I was up until recently, and I think I still am, but I am not sure.

Q. When you met with Mr. Stoltman and Mr. Hiller on June 5 you testified the purpose of that meeting was to attempt to adjust the matter. Is that correct? A. Well, my understanding was that Mr. Stoltman had approached Mr. Friedman over here, after a first hearing on the ques-

tion of the bargaining unit, and on whether or not we could get together, making some reference to the fact that we knew each other in another matter. And Mr. Friedman either called me or took it on his own to say that we would 493

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always discuss matters, and that this was a sort of without-prejudice meeting, to go over the matter and see if there was some common meeting ground.

Q. And during the course of that discussion you discussed the unit question? A. Yes.

Q. And you discussed the majority question? A. Yes.

Q. And you also discussed the demands of the union? Is that correct? A. Yes. 494

Q. And the union submitted a copy of that contract at your request? A. Yes.

Q. Why did you request a copy of the union's contract?

Mr. Friedman: I object to the form of the question?

Trial Examiner Guffey: On what ground?

Mr. Friedman: It is improper in form.

Trial Examiner Guffey: Overruled.

The Witness: Well, I wanted to explore the whole situation and see whether, assuming that the unit was right, or that we would agree on the unit, and assuming that they really represented a majority of the men in whatever was the proper bargaining unit, their demands were such that we could even discuss them, or whether they were demanding such extreme things that we would have to fight from the start. 495

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Q. (By Mr. Reitman) What do you mean by that "We would have to fight from the start"? A. Well, if you find

496 that a man is demanding your watch, you might give it up. If he is demanding your wife and child as hostages, you would not give them up. It is a question of degree.

Q. Well, will you explain what you mean and what method of fight you would use? A. Well, we would use all the ways the law gave us to avoid having to deal with an improper unit, or with a unit whose propriety was questionable, or with a unit without proof that the bargainers represented the majority.

Q. And that was the method of fighting which you intended to put up in the event that the demands were not
497 reasonable? A. Well, the nature of the fight that anybody would put up if the unit were not appropriate, or if the claimed bargainers did not represent a majority. In other words, if we could avoid, or if the situation was such that it really turned out that they represented a majority of such unit, the demands made were not too impossible, then we would discuss this with them. There were references to this between Mr. Stoltman and myself in prior negotiations. We had had some difficult situations which had not come to the point of proceedings before the Board, and we sort of knew each other, and that is the basis on which we
498 were trying to find a meeting ground.

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Q. But you asked for the contract so that you could see what the union's demands were? A. Yes, certainly.

Q. And if the union's demands were reasonable, you would be prepared to discuss the question with the union? A. Only on the one condition that they really represented the man for whom they were bargaining, and that it would be feasible to bargain for one part of the organization instead of the whole.

Q. Did Mr. Stoltman leave the room for a short time and leave you with the contract, to discuss it with Mr. Hoppin? A. I really don't remember that. 499

Q. You arranged a conference for June 9? A. I arranged a conference for the following Monday. I am pretty sure it was a Monday.

Q. What was the purpose of that conference? A. We were then to go over the whole situation again, unit representation and the contract terms.

Q. Were all the necessary parties gathered together on June 5? A. I don't remember.

Mr. Friedman: I object to the question. I don't know what Mr. Reitman means by "all the necessary parties." 500

Trial Examiner Guffey: Sustained.

Q. (By Mr. Reitman) Was a representative of the com-

pany present on June 5th? A. I am pretty sure that Mr. Hoppin was present. I don't remember, without reliance on my notes, whether Mr. Niemeyer and Mr. Goodfield were there. I have a dim recollection that Mr. Niemeyer was still out of town, but I am not sure.

Q. Was a representative of the union present? A. On June 5th? 501

Q. Yes. A. Mr. Stoltman and Mr. Hiller. They talked about it.

Q. Those were the parties to the contract, is not that correct? A. I don't follow you, Mr. Reitman.

Mr. Friedman: I object.

The Witness: I am glad to answer your question, but I don't understand.

Q. (By Mr. Reitman) If you were able to negotiate a

502 contract on that day, a representative of the company was available, or a representative of the union was available. Is not that so? A. If we were available to negotiate? Yes.

Q. What time of the day did this conference take place? A. I couldn't for the life of me tell you. Whether it was morning, afternoon or not, I don't remember.

Q. Do you know how long the conference lasted? A. I don't know; it may have been a half an hour or it might

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have been an hour and a half. I really don't remember.

503 Q. Did you discuss the terms of the contract with Mr. Stoltman? A. On the 5th?

Q. Yes. A. I think not; I think not.

Q. Is it possible that you might have? A. Oh, it is possible; yes. It is not probable, but it is possible.

Q. Do you mind restating for me again, if you have not up to this point done so, the purpose of the conference on June 9? A. At that time we were to go over the whole situation and they were to show us that they represented certain men. As I remember it, that had been raised at the first meeting and he didn't want to give us the cards.

504 They were to show us that they represented certain men. We were to go into the question of whether those men or their department was a possible unit, and whether it was possible to have that part or that group of employees unionized, and we were to go into the question of the terms which they demanded.

Q. And you were to analyze the contract? A. In the meanwhile; not I so much as the representatives of the company. My recollection is that I wanted a number of copies,

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and that Mr. Stoltman only had one, and that we put the next appointment over the week-end, because I would have to have copies made and sent to Mr. Goodfield, and perhaps to await Mr. Niemeyer's return. My recollection is that Niemeyer was not at that conference. Goodfield may been there, but I am pretty sure that Hoppin was. 505

Q. Did you also indicate that you would analyze the contract in between June 5 and June 9? A. Did I indicate when?

Q. I have not finished. A. I beg your pardon.

Q. And the conference of June 5, when the appointment was made for June 9, did you indicate then that you would analyze the contract and submit it to the company and be prepared to discuss the entire question with the parties on June 9? A. That was the purpose of the postponement. They were to bring to us proof of representation. We were both to study the question of unit, and we were to study it —and when I say "we", I mean the employer, because except as to language, I wouldn't know anything about it. They were to study it. Mr. Hoppin and Mr. Goodfield and Mr. Niemeyer, if he were there—which I don't remember— were to study the proposed terms and see how they compared with possibilities. 506 507

Q. What kind of proof was the union supposed to present of their majority? A. They were to bring cards and tell us who the men were.

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Q. Did the union agree to submit the cards to you? A. I won't say that they agreed to it, but it was understood that we were to have proof that we were dealing with representatives of actual people and not phantoms.

508 Q. Did you— A. I had had dealings with Stoltman before, and when he said he really had the cards, I was willing to go to that point with him, until we came up to the point of actual proof. I didn't want him to give us some of the cards, if we might abuse some of these men or the employer might, and I said later we would discuss the question of unit, which was troublesome to both of us.

Q. Am I correct in my understanding that you did agree with Mr. Stoltman that you would work out all the problems, and if you could arrive at a contract, and a contract was executed, Stoltman would be obliged to
509 show you proof of majority? A. Not after the contract was—

Q. Simultaneously? A. Before it was executed.

Q. At the same time that the contract was to be executed? A. And we said "All right", and we shook hands on this thing, and we said, "We will sign it," I still would not have signed it until I knew that the unit was feasible, and that the representation was real. There were just—there is no use in my volunteering.

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Q. Mr. Seligsberg, are you a director of the company?
510 A. Yes, I am a director and secretary.

Q. Under the New York Code, must a director be a stockholder? A. No.

* * * * *

Trial Examiner Guffey: You said that your recollection is not very clear about the exact dates of these conferences which took place. The evidence or testimony by other witnesses has been to the effect that the first one was on June 5, and on June 4 a conference took place at the Labor Board with respect to

the petition for certification, which the union had filed, and that the first conference at your office was on the day following. 511

I would like to have your best recollection on that.

(260)

The Witness: If Monday was June 9—and I am told that it was—

Mr. Friedman: Yes, it was.

The Witness: (Continuing)—then the conference which we had was either on the preceding Thursday or Friday. Now, if the other witnesses have said it was on Thursday, the 5th, I am certainly willing to agree with them. 512

Trial Examiner Guffey: Well, at any rate, at this first conference which counsel has referred to as being held, what was said about the appropriateness or inappropriateness of the unit that the union claimed, if anything.

The Witness: Well, I know that we had had discussions among ourselves about it, and whether I gave—

Trial Examiner Guffey: What do you mean by that?

513

The Witness: I mean Mr. Friedman, Mr. Hoppin, Mr. Goodfield and myself, and if Mr. Niemeyer was in town, undoubtedly Mr. Niemeyer; and we had had some discussions about it among ourselves. Whether I repeated our conclusions at that time to Mr. Hiller and Mr. Stoltman or not, I don't remember, but I must have said to them that the difficulty with the unit was that a third or a fourth of the employees would be enrolled in one organization, and then some

514 other organization, the CIO—this was an AFL organization—the CIO had a very strong Clerical Workers union, and we might be in the difficulty with this company that Stoltman and I had had in

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another place, where there was a CIO organization, and they could not do business, because all of the customers were AFL, and the AFL was picketing the customers, and Stoltman and I talked with the employers and the employees had to work out a switch, and that was the kind of difficulty that we were an-

515 ticipating; that there would be 28 AFL men in the basement and perhaps 40 CIO men and clerks upstairs, and we did not know what that would do to the business.

Trial Examiner Guffey: Did you discuss all these things at the June 5 conference?

The Witness: In no detail. I am not sure that I mentioned that to Stoltman. That is what we had in mind. Whether I started to state that we did not think the unit was right or not may or may not be the case. I have no recollection with whom I discussed

516 it. I know it was discussed, those three points, which had to be satisfactory, before we could come to a meeting of the minds.

Trial Examiner Guffey: If you were questioning the union's right to represent a majority of the employees, and the appropriateness of the claimed unit, or either one of those things, why were you interested in the terms of their contract?

The Witness: Because we wanted peace, if we could have it.

Trial Examiner Guffey: That is, do I understand 517
(262)
you correctly to say that while you had some doubts as to the appropriateness of the unit claimed, that if the contract was submitted to you and would form the basis in making a contract, that you would waive your objections to the unit?

The Witness: No, I do not think it went that far. What I had in mind was that recently in this conference that Stoltman and I had had, we worked on the other problem, which had been much more complicated, and what I had in mind and what my clients 518
had in their mind, was that perhaps Stoltman would say, "All right, we will take them if they want to come in." Or he would agree to have an election, or he would agree to get either his union or the other union together on the basis of all the people.

Trial Examiner Guffey: Then, is it correct to say, going to what you actually did consider, that you considered all three questions together, proof of majority, proof of unit, and the contract?

The Witness: I think it is entirely accurately to say those are the three things which we discussed and 519
which we would consider.

Trial Examiner Guffey: Then at the June 9 conference, that conference had been set when?

The Witness: Set on the date of June 5, if that is the earliest conference. The time was set then.

Trial Examiner Guffey: And the four employees
(263)
who were present at the June 9 conference were they told on June 5 to attend the June 9 conference?

420 The Witness: I don't know. It was done by Mr. Hoppin, Mr. Goodfield, or Mr. Niemeyer. It certainly was not done by me.

Trial Examiner Guffey: Tell us what occurred at that conference. You probably have done that already to some extent.

The Witness: We met in the library at my house. I don't remember the order in which these men came in, but I do remember that the four employees and Mr. Stoltman and Mr. Hiller came about the same time. I asked Mr. Stoltman and Mr. Hiller if they
421 still claimed to represent a majority of the unit for which they claimed recognition. My recollection is that Stoltman said, "It does not make any difference whom we represent. They designated us to bargain for them."

I said in substance that the employer could not be asked to bargain with representatives of the union which did not represent at least a majority of the employees for whom they undertook to bargain, and that the majority of that particular unit for which they were claiming recognition and bar-
422 gaining powers had told us that they did not wish to be represented by these men, and they had withdrawn their authority, or had not given them any.

Then I asked the men individually, the four employee representatives whether they had told us

and the group which had been with Mr. Hoppin on the preceding Saturday, had told him that their group did not care to be represented any longer by the union, and they said, "Yes"; that that was true.

I asked them whether anybody, Mr. Hoppin, Mr. Niemeyer, Mr. Goodfield, Mr. Friedman, or myself, or anybody, directly or indirectly representing the employer, had induced or suggested to them or persuaded them to take that stand, and they said no, that it came about among themselves. 523

I then told Mr. Stoltman and Mr. Hiller that I did not think there was anything more to talk about; that they were purporting to represent men who said they were no longer represented by this union, and I didn't feel that the employer could properly bargain with them. 524

Mr. Stoltman then made some threats about blacklisting or boycotting and picketing customers. I am not sure whether he mentioned the names of the customers or not, and then we broke up—not broke up, but Mr. Stoltman and Mr. Hiller left.

Trial Examiner Guffey: After you told the union representatives that the employees had told you that they no longer wanted the union to represent them, was there any discussion after that about unit or terms of contracts?

The Witness: No. 525

Trial Examiner Guffey: Do you have anything further?

Mr. Friedman: Pardon me?

Trial Examiner Guffey: Do you have anything further?

(265)

Mr. Friedman: No.

Trial Examiner Guffey: That is all, thank you. (Witness excused.)

Mr. Friedman: Mr. Hoppin.

526 BENJAMIN L. HOPPIN was thereupon called as a witness by and on behalf of the respondent and, having been first duly sworn, was examined and testified as follows:

Direct Examination:

Trial Examiner Guffey: State your name and address to the reporter, please.

The Witness: Benjamin L. Hoppin, 178-74 Wexford Terrace, Jamaica.

Q. (By Mr. Friedman) What is your occupation? A. The general manager of the Medo Photo Supply Corpora-
527 tion.

Q. Were you general manager of the Medo Photo & Supply Corporation in May 1941? A. Yes, I was.

Q. Do you recall Mr. Bruchbacher coming to see you on June 7, 1941? A. Yes, sir.

Q. What day of the week was it? A. On Saturday.

Q. What time of the day did he come to see you? A. About eleven o'clock.

(266)

Q. Did you arrange that appointment? A. For Mr. Bruchbacher to come to me?

528 Q. Yes. A. No, sir.

Q. He came up to you without anybody arranging the appointment for him? A. Yes, sir.

Q. Now, what did he say? A. He asked if I would receive a group of employees who would like to talk to me.

Q. What did you say? A. I answered him that if they would come up after working hours—we close at one o'clock—it would be all right.

Q. Was that all that was said at that time? A. That is all.

Q. And then he left? A. He left immediately.

Q. Did any employees come up to see you after one o'clock on that day? A. Yes, quite a group. 529

Q. About how many? A. Twelve.

Q. Do you remember their names? A. I can't recall.

Q. Do you remember any of them? A. Yes, I think

(267)

there was Schroeder or Schroer—I don't know what it is.

Q. Do you mean you don't know which one it was, Schroeder or Schroer? A. Yes, sir. There was Bruchbacher, Seminara, John Granito, and Jerry Munrett, Goshgarian, and I am not sure about the others. 530

Q. I show you Respondent's Exhibit No. 2 and ask you if that refreshes your recollection as to the employees who came to see you on that Saturday afternoon, June 7? A. Yes.

Q. The employees listed on that exhibit, on page 3, after the line, "A little after one on Saturday the following men came up:". A. That is right.

Q. Those are the men who came to see you? A. Yes, that is correct.

Q. What happened after they came to your office? A. They came up and said that, "We have decided that we don't want to have anything to do with the union." I immediately stopped them, and I told them that if there was anything at all pertaining to any union activities, I did not want to listen to them at all, but if it was anything else that they had to offer, I would be willing to listen to them. 531

Q. What was said after that? A. Well, they said,

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"Mr. Hoppin, we have one thing that we are primarily interested in. The working conditions here are excellent.

532 We are very happy with our jobs, but we would like to get more money." I told them that Mr. Niemeyer was away and would not be in until Monday morning, and I alone was unable to make a decision about it, about increases, but if they would let the thing go over until Monday morning, I would have word for them. I told them to come up about eleven o'clock Monday morning.

Q. Did they tell you what increases they desired? A. Yes, they submitted a list to me of three classifications.

Q. Do you remember what they were? A. Yes, one which they considered more or less as senior, employees
533 for which they asked $23.00 per week. Then another group, for which they asked $18.00 a week; and the lower bracket, which included errand boys, $15.00 per week.

Q. Now have you told us the entire substance of the conversation that you had with the employees at that meeting on the afternoon of June 7, 1941? That is, as far as you can recall it? A. That is as far as I can recall it, yes.

Q. Did you meet with any of the employees on June 9, the following Monday? A. Yes.

(269)

534 Q. Did they come to your office at eleven o'clock? A. Yes.

Q. Do you recall who came? A. What?

Q. Do you recall who came? A. Well, there was a group, but I don't recall the names of them. There was quite a group which came up, consisting mostly of the employees that were there Saturday.

Q. But not all of them? A. No, I don't think so.

Q. Now what happened at your meeting with the em-

ployees on June 9? A. Well, I told them that the matter had been discussed both with Mr. Goodfield and Mr. Niemeyer, and that we had decided that the fifteen-dollar group, we would grant them fifteen dollars per week, the ones which asked for fifteen dollars. 535

Trial Examiner Guffey: What group was that?

The Witness: That was errand boys.

The next group was eighteen dollars per week, and the other group, instead of giving them twenty-three dollars per week, I told them that the company had decided that we would give them twenty-one dollars per week. 536

Trial Examiner Guffey: What were the groups that got eighteen dollars, and twenty-one dollars?

(270)

The Witness: Well, there were some boys who had just been raised up from errand boys to that. There was quite a change in help, and some of the boys only recently had been advanced to filling orders, and perhaps helping to pack, and receive possibly. I could not recall what it was.

Trial Examiner Guffey: Very well.

Q. (By Mr. Friedman) In the group which were increased in salary to twenty-one dollars, there were the older employees? A. That is right. 537

Q. Was anything else said at that meeting on June 9 at eleven o'clock? A. Well, the boys expressed satisfaction, and before they left they impressed me with the fact that they came up themselves and were not induced by anybody to come up and talk to me; and they were all happy and thanked me.

538 Q. Did you at any time discuss with any of the employees of Medo union activities? A. Never.

Q. Did you at any time tell any of the employees of Medo that it would be better not to join the union? A. Never.

Q. Did you ever tell any of the employees at Medo that if they wanted to join the union, it was all right, but if they didn't want to, it was better yet? A. Never.

(271)

Q. As a matter of fact, you never had any discussion about union activities with any of the employees, did you?
539 A. I did not.

Q. Now when did this increase in salary go into effect? A. The week of June 6, between the 6th and the 13th.

Q. Do you mean the week ending June 13th? A. That is correct.

Q. To your knowledge, did any other officer or manager of Medo speak to any of the employees about their union activities? A. No.

Q. Did any other officer or manager or supervisory employee of Medo speak to any of the employees to
540 persuade them not to join any union.?

Mr. Reitman: Within your knowledge.

The Witness: No, sir.

Q. (By Mr. Friedman) On June 13, 1941, did you increase the salaries of any other employees of Medo? A. Yes.

Q. Was there a general increase in salaries? A. Yes, the majority of the employees' salaries were increased.

Q. Do you mean there was practically a general increase in salaries? Is that right? A. Yes.

Q. And did Medo again at the end of the year put into 541
(272)
effect a general increase of salaries? A. Yes.

Q. That is, at the end of 1941? A. They did not increase everybody, but the majority of the employees.

Mr. Friedman: Now, I offer in evidence a photostatic copy, consisting of two pages, of the payroll of Medo for the week ending August 2, 1941. This exhibit has been blocked out at the top, on the first page, a certain portion of the payroll, which on the original payroll contained the names and salaries of the officers of the Medo Corporation. 542

Trial Examiner Guffey: Are these weekly amounts?

Mr. Friedman: Yes, it is the weekly payroll, and it is for the week ending August 2, 1941.

Trial Examiner Guffey: The top columns marked "amounts" show "194" after Jay Zimans. What is that?

Q. (By Mr. Friedman) What does that mean, Mr. Hoppin? A. That is a figure which may have been carried over. You can tell that by referring to the payroll book which you have. It may be a continuation. 543

Q. It is just a carryover of a total, is that it? A. Correct.

Trial Examiner Guffey: Any objection to this?

Mr. Reitman: No, sir.

Trial Examiner Guffey: If not, they may be admitted as Respondent's Exhibit 3.

(273)

(The document referred to was marked Respondent's Exhibit No. 3 and received in evidence.)

* * * * *

544 CROSS EXAMINATION:

Q. (By Mr. Reitman) Mr. Hoppin, on June 7, when Ray Bruchbacher came to the office at eleven o'clock in the

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morning and asked if you would receive a number of employees and discuss something with them, did you ask them what they wanted to talk about? A. No, sir.

Q. Will you try and recall, if you can, the exact words that Ray Bruchbacher used when he approached you? A. What is that?

Mr. Reitman: Will you repeat the question
545 please, Mr. Reporter?

(Question read.)

The Witness: He came up to me and he said, "There is a matter which some of the employees want you to discuss", and would I receive them.

Q. (By Mr. Reitman) There was a matter some of the employees wanted to what? A. To discuss.

Q. Do you recall whether Mr. Bruchbacher said, "Some of the boys in the basement would like to discuss the situation with you"? A. No, I do not.

Q. You signed this statement marked Respondent's
546 Exhibit No. 2? A. Yes.

Q. And you read this statement? A. Yes, I read it.

(275)

Q. I refer you to page 3, the paragraph in the middle of the page, and ask you to read that. A. (Reading to self) Yes.

Q. Does that refresh your recollection about what Ray Bruchbacher said? A. That is right.

Q. So that Ray Bruchbacher told you that some of the boys would like to discuss the situation with you? A. That is correct.

Q. What was the situation which Ray Bruchbacher wanted to discuss? A. I didn't ask him. 547

Q. Did you ask him what it was? A. No, I did not.

Q. Did you make any effort of any kind whatsoever to determine what the employees wanted to talk to you about? A. No, I did not. Not at that time, because it was a Saturday morning, and we were very busy on Saturday, and I told him that if there was anything he wanted to say, or if anybody wanted to talk to me they could come up after we were through work, which is one o'clock.

Q. And that you would be glad to talk to them? A. And that I would be glad to talk to them.

548

Q. Now when these boys came up, as I understand you, before you said that you did not want to discuss anything pertaining to union activities? A. That is right.

(276)

Q. But if they had anything else to offer, to go ahead? A. That is right.

Q. What did you mean by "anything else to offer"? A. Well, I mean if they had anything that they wished to discuss with me, I would listen to them.

Q. Such as what? A. But if it was anything about their union activities, I wanted no part of it. 549

Q. And this also would include such things as a discussion about their wages? A. Yes.

Q. And you were willing to talk to them about their wages? A. Wages?

Q. Yes. A. Yes. I did not know they came up about wages, but I was willing.

Q. And you were present at the conference on June 5 at Mr. Seligsberg's office, were you not? A. Yes, I was.

Q. That was the conference which Mr. Stoltman was present at? A. Yes, sir.

550 Q. When he submitted a copy of a union contract? A. That is right.

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Q. And a portion of that union contract referred to wages of these employees? A. I wouldn't know.

Q. Did you ever see a copy of the union contract? A. No, sir.

Q. Did you know what the union contract contained? A. No, sir.

Q. Nothing about it at all? A. No, sir.

Q. In the course of the conference on June 5 was any
551 discussion had about wages? A. No, sir, not to the best of my recollection.

Q. Was any discussion had about union demands? A. No, sir.

Q. Do you remember Mr. Seligsberg telling Mr. Stoltman that he would like to see the union demands, and see if they were reasonable? A. He said he would like to see a copy of the contract. At first he said that he wished to be convinced that Mr. Stoltman and Mr. Hiller, or the union, were the bargaining agent for them.

Q. Bargaining agent for what purpose? A. For the
552 employees.

Q. For what purpose? A. For whatever they came up; to negotiate a contract.

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Q. A contract for what purpose?

Mr. Friedman: I object to the question as improper in its form. He can have him state the substance of the conversation which took place, and not the conclusions.

Trial Examiner Guffey: Objection overruled.

Read the question please, Mr. Reporter.

(Question read.) 553

The Witness: From the union.

Q. (By Mr. Reitman) The purpose was to adjust the hours of employment; is that right? A. I don't know what the contract contained.

Q. What was the purpose of the negotiations? What was the purpose of bargaining for a contract?

Mr. Friedman: I object.

The Witness: I knew nothing about that.

Mr. Friedman: Mr. Hoppin, please, I object to the question on the same ground as the former question. It is improper in form and calls for a conclusion. 554

Trial Examiner Guffey: Overruled.

Q. (By Mr. Reitman) You say that the union claimed that they represented the employees, that is, Mr. Stoltman claimed that the union represented the employees? A. He said he did, yes.

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(279)

Q. (By Mr. Reitman) About how long did this conversation take on Saturday at one o'clock? 555

Mr. Friedman: Which one do you refer to? The one o'clock conference?

Mr. Reitman: The one o'clock conference.

The Witness: I couldn't tell you exactly; possibly half an hour, possibly fifteen minutes to one-half hour.

Q. (By Mr. Reitman) Were all the boys in the basement present? A. No, only the boys that are on that list that was submitted there.

556 Q. Did you discuss wage increases for the boys that were not present? A. I merely—they demanded or they asked me or they told me that they did not want to join the union, but they wanted more money, and they said, "This is what the boys are asking."

Q. Did you ask them whether they were members of the union? A. No, sir.

Q. Did you ask them if any of them had withdrawn from the union? A. No, sir.

(280)

Q. Did you advise them that the company and the union
557 were in the process of negotiating that situation? A. No, sir.

Q. Did you inquire as to any authority they had to speak for the men that were not present? A. No, sir, I did not. They themselves mentioned that they spoke for three or four of the boys that were not there.

Q. Did you ask them to indicate any proof of that fact? A. Look, I only spoke to the fellows that came up to see me.

Q. You did not ask them any questions at all? A. No; I did not ask them.

558 Q. I understand that you told the boys to return on Monday. Is that right? A. That is right.

Q. And that was when Mr. Niemeyer would return? A. That is right.

Q. And on Monday morning did you discuss this with Mr. Niemeyer? A. Yes, I did.

Q. At what time did you discuss it with him? A. About ten o'clock. He usually comes in about ten o'clock, and I discussed it.

Q. And you arranged the appointment for eleven o'clock

Monday morning, before you spoke with Mr. Niemeyer? A. 559
I told them that if they came back, I would have an answer.

(281)

Q. You told them to come back at eleven o'clock on Monday? A. That is right.

Q. And you spoke with Mr. Niemeyer at ten o'clock on Monday morning? A. Approximately. I don't know exactly.

Q. Approximately ten o'clock? A. It was during the morning.

Q. About an hour before the boys were supposed to come back to see you? A. It was an hour or an hour and a half, 560
or it may have been two hours. It was the first thing I did Monday morning.

Q. What did you tell Mr. Niemeyer? A. I presented to him the demands for salaries that the kids or the boys said they would like to get.

Q. And when Mr. Niemeyer saw these demands, did he discuss them with you? A. Yes, we talked about them.

Q. What was your discussion? What was your conversation? A. I don't quite get what you mean.

Q. What did Mr. Niemeyer say to you, and what did you say to him? A. Well, we discussed whether or not we 561
were going to give the boys what they asked, and we decided that the fellows that asked for fifteen dollars a week, we would give it to them.

(282)

Q. Go ahead. A. The fellows who asked for the eighteen dollars per week, we were going to give them the eighteen dollars. The fellows who asked for twenty-three dollars, we would give them twenty-one dollars a week.

Q. Why did you give the fellows who asked for twenty-three dollars, twenty-one dollars a week? A. Why?

562 Q. Yes. A. That is all they were worth. That was what they were worth to us. That was the schedule that we decided on.

Q. You said something before about the fact that some of them had just recently been stepped up from errand boys? A. Some of them, yes.

Q. Who had recently been stepped up from an errand boy? A. I can't tell you without referring to the records.

Q. Were they amongst the oldest employees you had in the basement? A. No, sir, they were comparatively new

563 Q. How long was Angelo Seminara working for you? A. I can't tell you exactly.

Q. If I told you he worked for you about six years, would you say that that was incorrect? A. No, it is possible.

Q. And Ray Bruchbacher about five years? A. That

(283)

is possible.

Q. And Bill Goshgarian about six years? A. It is possible.

Q. Then you returned—Oh, by the way, did you mention

564 to Mr. Niemeyer that conference which was held in Mr. Seligsberg's office on June 5 with Mr. Stoltman and Mr. Hiller, representing the union? A. Did I mention it to him?

Q. Yes. A. No, he was there.

Q. Mr. Niemeyer was there? A. That is right.

Q. Mr. Niemeyer knew that the union claimed to represent the employees in the basement? A. Yes, I assume he did.

Q. He had the feeling that you did? A. That is right.

Q. And then you sat down and prepared this list and went back upstairs and met the boys when they came in at eleven o'clock? A. I didn't come upstairs, but the boys came upstairs to my office. I happened to be upstairs. 565

Q. You returned to your office from your conference with Mr. Niemeyer? A. That is right.

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Q. And at eleven o'clock the boys came in? A. That is right.

Q. At eleven o'clock you told them that those boys that had asked for fifteen dollars would receive fifteen dollars, is that correct? A. That is correct. 566

Q. And that those that had asked for eighteen dollars would receive eighteen dollars? A. That is correct.

Q. And those who had demanded twenty-three dollars they were going to get twenty-one dollars? Is that correct? A. That is correct.

Q. At eleven o'clock a committee of four came up to your office. Is not that right? A. There were more than four.

Q. There were more than four? A. Yes, sir.

Q. All the boys that came up to see you the Saturday before, were those the boys who came in on Monday? A. I 567 can't tell you exactly.

Q. Did you tell them that there would be wage increases for certain boys who had not been up on Saturday? A. No, sir.

Q. Were there wage increases for certain of the boys who had not been in on Saturday? A. Yes, there were.

(285)

There was a general increase, practically general throughout the place.

568 Q. But the boys approached you on Saturday for certain particulars, did they not? A. Yes.

Q. And you specifically negotiated and gave them the wage increases for the particular people they asked about? A. I didn't get that.

Q. When you met the boys at eleven o'clock on Monday, you gave them your answer that there would be an increase? A. Yes.

Q. And in accordance with what you have already testified? A. Yes.

Q. Do you remember all of your conversation with the
569 employees on Saturday, June 7, at one o'clock? A. I can't recall all of it.

Q. You can't recall all of it? A. All of it, no.

Q. Now, the whole thing happened so long ago it is a little vague, is it not? A. It is quite a while back.

Q. And you indicated to the employees that you did not want to interfere with their union activities in any way? A. Yes, I did.

Q. And you told them that if they wanted to join the

union, it was O. K., and to make up their own minds about
570 it? A. No, I did not; I never said that.

Q. Did you say anything to them at all about the union? A. The only thing I said to those fellows about the union is, when they came up to my office and they said they wanted to talk to me, or they said they wanted to talk to me, and I told them that if it was anything pertaining to the union, I don't want to hear it.

Q. On Monday when the boys came in, did you say anything to them about the union? A. What?

Q. On Monday morning at eleven o'clock, when the

boys came in, did you say anything to them about the union? A. I don't remember saying anything about the union. 571

Q. It is the practice of the company to grant annual wage increases, is it not? A. We grant increases throughout the year, when it is necessary, and when we have occasion to.

Q. Usually Christmas time is an occasion when you grant an increase? A. Yes, we do.

Q. What are some of the other occasions when you grant increases? A. Well, when we feel that we can give them more money, or when a fellow is eligible for pro- 572

motion and he shows ability to handle his new job.

Q. Those are individual increases? A. That is right.

Q. I had reference to a general wage increase in the place. As I understood you before,—and you correct me if I am wrong—it was a general practice to give general wage increases around the first of the year? A. That is right.

Q. Was it a practice to give general wage increases at any other times during the year? A. No.

Q. But on June 13, after you had been advised that the union was attempting to organize the employees, and after you had been advised that the union claimed to represent a majority of the employees, and after you had been approached by a number of your employees in the basement about wage increases, you gave a general wage increase? A. That is right. 573

Q. What was necessary about giving a general wage increase at that time?

Mr. Friedman: I object to the form of the question as improper.

574 Q. (By Mr. Reitman) What was the reason for the general wage increase at this time?

Mr. Friedman: Same objection.

(288)

Trial Examiner Guffey: Overruled.

The Witness: We gave them a general increase because we had the best six months in the history of our business. Our business was comparatively good, and we felt that we could give them an increase.

Mr. Reitman: That is all.

575 Mr. Friedman: Just one or two questions.

RE-DIRECT EXAMINATION:

Q. (By Mr. Friedman) At about this time in May, Mr. Niemeyer, you say, was away? A. That is right.

Trial Examiner Guffey: About what time?

Mr. Reitman: Toward the end of May 1941.

The Witness: That is right.

Q. (By Mr. Friedman) He had been away for some time; is not that right? A. That is right.

Q. About how long, if you recall? A. About a month.

576 Q. About a month? A. That is right.

Q. When he came back, you took up the question of the wage increase? Is not that so? A. That is correct.

Q. While this meeting of June 7 was still fresh in your mind, and on June 9, didn't you sign a statement setting

(289)

forth what took place at your meeting with the employees on June 7? A. Yes, I did.

Q. And Respondent's Exhibit No. 2 is that statement? (Handing paper to witness).

Mr. Reitman: I object to that as repetitious; it is already in evidence. 577

Trial Examiner Guffey: Overruled.

The Witness: Yes, it is.

Q. (By Mr. Friedman) Is that your signature at the end of that statement? A. Yes, it is.

Q. Now do you know how many of the employees in the shopping, receiving and order department, who were employees in May 1941, are no longer with the company?

Mr. Reitman: I object to that as immaterial.

Trial Examiner Guffey: What is the purpose of that?

Mr. Friedman: The reason for that is to show 578
that there has been a substantial change in the personnel of this department, so that the employees who are now working for the company are substantially different from the employees who were working for the company in May 1941.

Trial Examiner Guffey: Objection sustained. You may offer to prove, so that the record will show it.

Mr. Friedman: I offer in evidence the payroll of —

(290) 579

Trial Examiner Guffey: I do not mean to offer it in evidence, but just make an oral statement for the record, an offer of proof.

Mr. Friedman: I see.

I offer to prove that the following employees of Medo Photo Supply Corporation, who were employed in the shipping, receiving and order department in May 1941, are no longer in the employ of Medo:

580 Ray Bruchbacher, who is now in the Army.
Ed. Oliveri, in the Army.
Stanley Abelow, in the Army.
Thomas Valentine, in the Army.
Danny Matthews is in the Army—
The Witness: I think he works for the Navy yard.
Mr. Friedman: He works for the Navy.
Mervin Sussman is in the Air Corps.
Jack Steinberg is where? In the Army?
The Witness: No, he went on a defense job.
581 Mr. Friedman: He is on a defense job.
Robert Scott?
The Witness: He is in the Army.
Mr. Friedman: He is in the Army?
The Witness: Yes.
Trial Examiner Guffey: This general wage increase which you speak of, when did that become effective?

(291)

The Witness: The week ending June 13.
Trial Examiner Guffey: The week ending June
582 13?
The Witness: Yes, sir. That is right.
Trial Examiner Guffey: That became effective, then, at the same time that the wage increases for these others?
The Witness: There was a general increase throughout the plant, practically general.
Trial Examiner Guffey: When did you decide to give a general increase?
The Witness: After I had an opportunity to talk to Mr. Niemeyer and Mr. Goodfield.

Trial Examiner Guffey: When you say it was a general wage increase, was it a general wage increase for people working in the retail stores too? 583

The Witness: All through the place.

Trial Examiner Guffey: Did you talk to Niemeyer about it at the same time you talked to him about the request for a wage increase which had been made by the shipping and receiving employees?

The Witness: Yes, I did.

Trial Examiner Guffey: Had you at any time prior to Monday, June 9, discussed the possibility of granting a general wage increase? 584

The Witness: Yes, sir, we discussed it earlier.

Trial Examiner Guffey: When did you first discuss it?

(292)

The Witness: We discussed it during that week—I think Mr. Niemeyer got back on a Monday, and it was discussed with him then, a week earlier.

Trial Examiner Guffey: A week earlier than what?

The Witness: Think June 6, or the week ending June 6.

Trial Examiner Guffey: You say that Niemeyer was out of town on Saturday, June 7? 585

The Witness: He did not come down on Saturday. He had come back that week.

Trial Examiner Guffey: Was he in town on Saturday, June 7?

The Witness: He was home and did not report to the office that day.

Trial Examiner Guffey: When did he actually get back into town?

586 The Witness: During the week preceding, June 6.

Trial Examiner Guffey: The early or latter part of the week?

The Witness: I can't tell you exactly. It may have been early in the week.

Trial Examiner Guffey: Would you say that it was during the week prior to June 7 that Mr. Niemeyer and you talked about a general wage increase?

The Witness: Yes.

Trial Examiner Guffey: Who opened that discus-
587 sion between you and Niemeyer?

(293)

The Witness: I opened it.

Trial Examiner Guffey: What did you say to him?

The Witness: I spoke to him about our general business conditions. We had an exceptionally busy first half of the year, and there was something that we ought to do for all the employees.

Trial Examiner Guffey: What did he say?

The Witness: He was quite agreeable.

588 Trial Examiner Guffey: When this group of employees in the receiving and shipping department came in to see you on Saturday, June 7, did you tell them anything about your prior talk with Niemeyer concerning that matter?

The Witness: No, I did not.

Trial Examiner Guffey: Anything further?

Mr. Friedman: One question.

Q. (By Mr. Friedman) Where does Mr. Niemeyer live?

A. Scarsdale.

Q. Would it refresh your recollection as to whether Mr. Niemeyer came back from out of town on the week-end of Decoration Day? Does that refresh your recollection? A. That is right. 589

Q. It would be toward the end of May? A. I think he came in early in June.

Q. Do you mean right after the Decoration Day holiday? A. That is right.

(294)

Q. About the second of June? A. I think early in June.

Mr. Friedman: That is all. 590

Trial Examiner Guffey: Anything further, Mr. Reitman?

Mr. Reitman: That is all.

Trial Examiner Guffey: That is all.

(Witness excused.)

Mr. Reitman: Mr. Examiner, I offer in evidence as Board's Exhibit No. 3 a stipulation on commerce entered into between Messrs. Seligsberg, Friedman and Berliner, attorneys for respondent, and myself, attorney for the Board.

Mr. Friedman: No objection. 591

Trial Examiner Guffey: Is it agreed between counsel that the addition made in longhand in the stipulation is accurately stated?

Mr. Friedman: Yes, sir, the respondent agrees to that.

Trial Examiner Guffey: It will be received as Board's Exhibit No. 3.

(The document referred to was marked Board's Exhibit No. 3 and received in evidence.)

592 Trial Examiner Guffey: Is there anything further?

Mr. Reitman: The Board has no rebuttal.

Trial Examiner Guffey: You are resting now?

Mr. Reitman: Yes, sir.

(295)

Trial Examiner Guffey: Do you rest for the respondent?

Mr. Friedman: Yes, but in connection with the motions which we made to dismiss at the beginning of the Board's case and at the end of the Board's 93 case, I would like to take an exception to your denial of such motion.

Trial Examiner Guffey: Yes, sir.

I would request that counsel for the Board and counsel for the respondent argue orally before me in as brief a manner as will state adequately your positions with respect to the situation. Before that I may state that any party may file briefs with the Examiner if he desires.

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(296)

4 Mr. Reitman: • • •

(297)

We also have, I believe, a violation of section 8 (1), which is a derivative of one, and that is as a result of the refusal of the company to bargain.

The refusal of the company to bargain, or, rather, the defense that the company asserts against the refusal to bargain is that the union had lost its majority, and for that reason they were under no obligation to bargain with the union.

Discussion.

I respectfully submit that the refusal of the company to bargain with the union, after the union lost its majority, is not a defense, when the loss of the majority is the result of the unfair labor practices of the employer. 595

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(298)

I think it is furthermore evidenced by the fact that after objecting to the unit claimed they dealt with the Independent employees, coming up in a unit, which was substantially the same as the unit claimed by the union.

Furthermore, I think it is important to remember 596
that the company dealt with the individual group of employees coming to the company, attempting to get wage increases. There were no questions raised about the unit, and there were no questions about the authority of this group to represent the employees. It is admitted that there were a number of employees who were not present at these conferences, and yet the wage increases covered those people as well. The very questions which the company raised with the union were not raised 597
with this group which actually constituted a bargaining committee for employees in their unit.

I think a further evidence of bad faith is indicated by the company's request for an opportunity to see the union contract prior, as they allege, to entering into an agreement with the union, and recognizing that the union represented a majority.

I think Mr. Seligsberg's version of what happened is quite true. I think the company recognized that

598 this was an appropriate unit. I think that this company recognized that the union had a majority,

(299)

and the whole issue was whether or not they were going to get the type of contract in which the company was interested; if the union's contract was fair and reasonable, and an agreeable one to the company, the contract would be signed.

The real issue in this case is whether or not the union lost its majority as a result of the unfair labor practices of the employer. The union had eighteen

599 signed cards out of a unit, including even possibly those that might be supervisors, 25.

The testimony seems to indicate that the employees approached the company on June 7, and there is testimony in the record from those who were alleged members of the negotiating committee, in which they indicated to the company that if they would receive wage increases they would forget about the union. I realize that this has been denied by Mr. Hoppin, and Mr. Hoppin has indicated, how-

600 ever, that the whole thing is rather vague and uncertain in his recollection at this time, as it happened about a year ago.

There is in evidence a statement signed by Angelo Seminara, in which statement he indicated to Mr. Livingston, a Board agent, when the statement was taken, and which statement he affirmed as being true, that he told Mr. Hoppin at this conference that the men would prefer a non-union shop, if the company would give them wage increases.

Discussion.

(300)

The statement of William Goshgarian, which appears in evidence which was given about three or four days prior to the hearing in this matter, again indicates that when the employees approached the management, they indicated that if the management —and told the management—that if the management would give them wage increases they would forget about the union. They would rather have the wage increase individually, without the union. 601

I respectfully submit that the granting of the wage increases to employees who are members of the union, in the face of what actually were negotiations between the company and the union, is a violation of section 8(1), and is an interference with the rights of the employees in determining for themselves their representation. 602

If the union lost its majority as a result of these employees leaving the union, because they received the wage increase at a time when the company and the union were supposedly negotiating, I respectfully submit that under those circumstances the union lost its majority by reason of the unfair labor practices of the company. 603

I feel that there is a great deal which I might be able to say as to the evidence and the testimony, about the only purpose I have in summing up now is to present to you the theory that I feel that the case must be approached on to understand it. As the

(301)

basis of proof of what is in the record—

Trial Examiner Guffey: What do you view in your mind as the first date on which there was a refusal

604 to bargain, or on what date do you claim that the respondent first refused to bargain?

Mr. Reitman: I claim that the respondent first refused to bargain on May 25. I believe that is the date. It is the date that the respondent received a letter from the union requesting bargaining.

Trial Examiner Guffey: That letter is dated May 22, followed by a telephone call the next day?

Mr. Reitman: That is correct. At that time I feel that the respondent refused to bargain, for this reason:

605 That all these subsequent incidents and the series of events which occurred are a reflection of the fact that the respondent did not at the outset intend to bargain in good faith.

Trial Examiner Guffey: What do you think the respondent should have done, when receiving that letter?

Mr. Reitman: I think the respondent showed its intention, or evidenced its intention, at the time the employees approached the respondent regarding the wage increases, but I submit that the Act at that time

606 reflects back to the period that the union requested the respondent to bargain.

Trial Examiner Guffey: You think, do you, that

(302)

this claim of refusal to bargain on June 9 was because of what happened after the June 9 conference?

Mr. Reitman: Yes, there was a refusal to bargain at that time, on June 9, and the respondent flatly stated they would not bargain with the union at that time.

Discussion.

Trial Examiner Guffey: And your claim of refusal to bargain on May 23 rests on the further fact that the flat subsequent refusal to bargain on June 9 really carries the refusal back to May 23 because of what happened there, or do you think that on May 23rd, when the union called the respondent, the respondent should have said more than that, "Mr. Niemeyer is out of town"? 607

Mr. Reitman: I think it reflects back to May 23, in that this indicates the intention that the respondent had throughout this entire proceeding. The intention that the respondent had in mind was, in whatever way it could, to avoid the necessity of bargaining with this union. There was a delay. On May 23, when respondent was notified of the union's intention that they represented the employees, which was followed up by a telephone call, the respondent stated that Mr. Niemeyer, the president, was out of town. No effort was made to contact the union subsequent to Mr. Niemeyer's return. 608

As I indicated before, the respondent, with its officers and its attorneys, sat down with the union on June 5, without Mr. Niemeyer being present, to dis- 609

(302-A)

cuss the matter of a contract, which was one of the phases which they discussed at that time.

I think that if the respondent had been sincere and had been willing to bargain in good faith, they would have requested the union at that time to have submitted proof of the fact that they represented a majority, and advised the union that in the event they

610 did represent a majority of their employees, they would bargain.

(303)

Trial Examiner Guffey: What do you think that the effect of the union's filing a petition for certification on May 23rd, immediately following its request for bargaining, was?

Mr. Reitman: I think that the union was told that Mr. Niemeyer was out of town; and not told when he would return to town, and they felt that they would avail themselves of the National Labor Relations
611 Board for the purpose of proving their majority and seeking certification.

Trial Examiner Guffey: Is it your position that after the employes have designated a union as their collective bargaining representative, that they cannot rescind that action and tell the employer that they no longer care to be represented by the union?

Mr. Reitman: I think that the employees certainly can rescind their membership in the union. Employees can withdraw from a union after they have signed application cards.

612 Trial Examiner Guffey: How would they go about doing it?

Mr. Reitman: I think that the appropriate method would be to communicate with the union and advise the union that they no longer desired that they represent them.

Trial Examiner Guffey: They did not represent the union to represent them for any definite period of time?

Mr. Reitman: No, sir. There was no limitation on

it whatsoever, during the time that these employees acted or negotiated directly with the company. At that time the company and the union were in the 613

(304)

process of negotiating with each other. I think that the proof is quite clear, and all the employees testified indicating that had they not received the wage increase, they would have stayed with the union.

Trial Examiner Guffey: How material is that?

I have but a little difficulty, Mr. Reitman, with the case where the employer seeks out the employees during bargaining negotiations and grants wage increases and vacations, and whatnot, but I do have some difficulty with it, where the employees, of their own volition, as shown by the facts here—and what I say does not indicate that I am finding what the facts are—but if the employees voluntarily go to the employer and state they do not care any longer to be represented by the union, and they want a wage increase, if they can negotiate it, and don't care for the union, what has the employer to do to constitute an unfair labor practice? 614

Mr. Reitman: I will compare the case of an individual employee who voluntarily approaches a supervisor and asks him what he thinks about the union, and the supervisor responds to the voluntary request of the employee and says, "I do not think unions are any good. All they are good for is spending your money, giving them dues, and you do not get anything for it." 615

Trial Examiner Guffey: That is a statement which is an anti-union statement, which is a violation of

616 the Act. There is nothing in the Act which precludes the employer from granting wage increases.

(305)

Mr. Reitman: No, but I think it is a violation of the Act to grant—there are any number of cases where, in the face of a union organizational drive, an employer has granted bonuses or has granted wage increases, and that has been construed as interference with the free election of the employees.

Trial Examiner Guffey: Will you find me any cases which have held that in such the employees
617 have come and requested those wage increases, and stated before they made the request that they no longer wanted the union to represent them?

Mr. Reitman: There is a case in which Mr. Paradise sat as the Trial Examiner, but, unfortunately, the Board did not deal with the problem in the same way. I don't recall the name of the case at the moment, but I can get the case for you, where the same situation arose where the employees walked into the employer, saying, "We are going to give you one last chance to see if you will give us these wage
618 increases, or we will go and join the union," which is in substance what the testimony bears out. The employer there gave the employees the wage increases, and the differential was the same, and it was a voluntary act on the part of the employees in approaching the employer, and there was nothing in the Act prohibiting him giving wage increases to his employees when they requested it.

The Board did not discuss that particular phase of the question as a violation of section 8(1). That

(306)

was discussed in great detail in the intermediate report. 619

I would be glad to get that case out and submit it to you, and, in fact, if you like, I would like to make an exhaustive study of this particular question.

Trial Examiner Guffey: Whether or not it is an independent violation of section 8(1) or a part of 8(3)—

Mr. Reitman: Pardon me?

Trial Examiner Guffey: Whether or not granting the wage increase as a part of this case was a violation of 8(1), how was it an alleged refusal to bargain? 620

Mr. Reitman: I think it was, and on June 9 the company flatly stated their refusal to bargain, and the basis for the refusal to bargain at that time was that the union no longer represented the employees, and the reason that the union no longer represented any of the employees, I believe, is because the employees acted as a result of receiving these wage increases. 621

Trial Examiner Guffey: Well, the employer had not done anything, had he, to induce the employees to withdraw from the union? He had not called them in and said, "If you withdraw from the union, I will give you a wage increase." But, on the other hand, they had come to him and they did not say, "If you will give us a wage increase, we will withdraw from the union," but they said, as I remembered the testimony, "We no longer want the union

622 to represent us, if we can get a wage increase without it," which seems to me perhaps to be two different things.

(307)

Mr. Reitman: There was a statement of William Goshgarian, which is marked Board's Exhibit No. 10, "When we went up to speak with the company about wage increases, if we could get our wage increases, we would not have the union."

I think that is close to the language which you used.

623 You must appreciate one thing, that I have had considerable difficulty in the examination of these witnesses, not that they were violently hostile to me, as some Board's attorneys have found witnesses to be, but these witnesses are still employed by the company and they were reticent to talk about this when I first approached them, and they were reticent to talk to the Board's agent when they were first approached, and it was exceedingly difficult.

Although I do not recall exactly whether this was what he told me, he admitted his statement was
624 true and accurate.

Now, I think that the true factual situation will be, after reviewing the record, that these employees did go up to Mr. Hoppin and tell him, "If we can get wage increases, we will forget about the union."

In fact, Bruchbacher testified that the employees agreed amongst themselves that if they received wage increases, they would forget about the union, and if they didn't get wage increases, they would continue with the union.

(308)

One of the important factors is that although the language which the employees or the witnesses used —many of them used the term "need the union", it indicated their attitude. If they could get the wage increase, they did not need the union any more, but, if they could not get the wage increase, they would still need the union. 625

I submit, viewing it from that approach, the economic pressure, which was the basis, or one of the bases guaranteeing the employees the right to self-organization, it nevertheless influenced them in some way, so far as their position in the case is concerned. 626

Their need for organization ended when they gave these raises, and there was a certain amount of economic pressure applied.

I don't say that this company is a malicious company. I think this is a close question. I feel that there has been a violation. I do not think that the violation is malicious and of the vicious type, which we have seen in some cases, but I feel there has been a violation. 627

Trial Examiner Guffey: All right, Mr. Friedman.

Mr. Friedman: I have no intention of reviewing the evidence, because I know that the testimony is fresh in mind. However, because of Mr. Reitman's reference to the evidence and the conclusions which he draws therefrom, to my mind, they are so erroneous and incorrect, that I feel called upon to make some reference to them.

628 (309)

In the first place, Mr. Reitman—and I find difficulty in following his argument—Mr. Reitman says because of the employer's unfair labor practice, the employer is guilty here of not bargaining collectively with this union. It because of that, but I have not heard what the unfair labor practice is.

He charges us with delay. Let us take up the chronology of the transactions. On May 23rd, for the first time, the employer was informed by the union that they wished to bargain for their em-

629 ployees. They did not say anything about representing a majority, as I recall that letter. All they say is that, "We are glad to meet with you with reference to a union contract covering employees whom we represent."

That is all they say.

The following day, May 23rd, as soon as that letter is received, the union promptly telephones the employer and says, "We would like to come up and bargain with you."

The officer of the employer tells him, "Our presi-

630 dent is away, and he will be back at the end of the month," and that was only a week.

Immediately, and probably before the telephone conversation, they file an application with the National Labor Relations Board for a certification of the union as the proper bargaining agent for their employees.

(310)

On May 27th, while the president is still away, a letter was sent by the National Labor Relations

Board to the employer to come up on the certification request by the union. 631

We appeared for the hearing, and on June 3 we made an appointment at the request of the Board and the union, not for a week after or not for two weeks after, but one or two days after they set down the date, to see if the matter can be adjusted.

Trial Examiner Guffey: When you say "hearing", you mean a conference on the petition?

Mr. Friedman: A conference on the petition. Let us bear in mind what happened at that conference. At that conference, I represented the employer, and 632
to my mind I raised a very violent objection to recognizing the union, as the agent for this particular group of employees. Mr. Seligsberg testified that we have had experience with this particular union in another situation, where an employer was caught in the middle between contesting A. F. of L. and CIO unions, and at this hearing I raised the question, "If you are the collective bargaining agent for only this one group," and after all this is a comparatively small business, and only sixty employees, and is a unit in itself, being a combina- 633
tion retail and wholesale business— "and then the CIO union will come in, or some other A. F. of L. union will come in, and of course the store employees are the salesmen doing business there, and another union will organize the office force, and

before we know it, we will be in the middle in a jurisdictional dispute between the unions, similar to what we had with the other employer, where Mr. Stoltman represented one of the unions."

634 And I told him that was troubling me, and I thought the appropriate unit for such a small organization was a unit taking in all the employees.

At that conference I requested that the matter be set down for a hearing, so that the Board could determine the proper bargaining unit for this particular employer.

It was when I said that that Mr. Stoltman called me out in the conference room and requested me to have a discussion, an informal discussion, to see if we could not solve the problem. That we did im-
635 mediately. We met a day later, I think.

On that day we set the following Monday, four days later, to sit down and see if we could not come to some understanding.

In the first place, in view of those facts, how Mr. Reitman can charge that the employer is guilty of unfair labor practice because of delay is more than I can understand. I feel that his argument as to unfair labor practice of the employer is not well founded. I did not understand it, and to me it seemed to be a fallacious argument, and if it is a
636 proper argument, I cannot see any basis for claiming that the employer here is guilty of an unfair labor practice.

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(314)

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Now, we come to the charge about the increase in salary. The employees all testified that they voluntarily, and of their own accord, came to the employer on June 7 and said, "We do not want the union; we want more money."

Discussion.

Now, that is the basis of the claim that the em- 637
ployer in this case is guilty of an unfair labor practice, because, after considering the matter, he

(315)

gave them more money, and he gave the other employees more money.

Now there is no claim made, or there is no evidence offered to substantiate any claim that he thereby induced these employees to come to the employer and ask for an increase in salary.

There is no evidence to substantiate that the em- 638
ployer in any way tried to interfere with the organization of the union. All he did was to talk to the employees who came, and talked with a small group, after they had originally requested permission to talk to him, and asked for a wage increase, and he gave it to them.

I think that the case which I have previously shown to Mr. Reitman and mentioned to your Honor, Huch Leather Company, and General CIO Union, Case No. C-638, decided February 17, 1939, is clearly in point in holding that the granting of a wage increase by the employer, at the request of the 639
employees, where the employees initiated the negotiations, even during a proceeding involving a consent election, is not a violation of the National Labor Relations Act by the employer.

Trial Examiner Guffey: In that case there was granted a wage increase in response to a request while a consent election was pending. In this case the granting of the wage increase was made after the union had actually been designated, according

640 (316)

to the union's claims, by a majority of the employees in the appropriate unit.

I think there may be some material difference between the two cases. I don't think that under the circumstances of this case, inasmuch as the union had notified the employer that they represented a majority of the employees and asked for a bargaining conference, and on June 5 representatives of the respondent had looked at the union's proposed contract, and at least had some idea of what they

641 were negotiating, don't you think that he should have said to the employees, when they came in there on the 7th of June, "We are now having negotiations with the union on whether or not we are going to recognize them and whether or not we are going to grant certain demands which have been made, and we will have to postpone anything which you gentlemen want until we determine what those negotiations will be."

Mr. Friedman: I would like to answer that in two ways. First, in the Huch Leather Company

642 case the situation was practically identical with what it is here, because the consent election, which was pending at the time, was the result of the fact that the employer refused to consent to the fact and concede that the union had a majority. Huch was the employer and he replied that he was unwilling to accept the application cards as evidencing a majority, and he would not deal with the union unless they were designated as the bargaining agent,

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and the union agreed to the holding of a consent election. 643

That was exactly the situation in our case.

On June 7th, we had open for discussion (1) whether the union represented a majority; (2) what was the appropriate bargaining unit; (3) what would be the terms of the agreement?

So that we find ourselves in identically the position that the employer did in the Huch Leather Company case.

Now it is my experience that employers are so afraid of talking with employees about union matters because they are afraid a charge will be made by the union that they have violated the National Labor Relations Act, that when an employee comes up to them, they will not discuss union activities. That was the situation with Mr. Hoppin. He would not talk to them about the union, because he was afraid he would be charged by somebody with doing so. He did discuss with the employees wage increases. 644

I have had experience, and it is almost universal, when employees come up to talk to employers about unions, they will refuse, because the first thing the union does is to go to the National Labor Relations Board or the State Labor Board and file charges. That is the situation in this case. These people have been acting in good faith. 645

The speed with which we arranged all the meetings shows that the employer and the attorneys act-

646 ed in good faith. The fact that in the interim the
(318)
employees came up and said, "We do not want the union", there is nothing for the employer to do. He was afraid to tell them not to join the union, when coming to them, or when they came to him, and he avoided discussing union matters in any respects whatsoever with the unions.

I feel it is perfectly understandable, and it is justifiable that Mr. Hoppin made no mention of the union when these men came and talked to him, and
647 he told them he did not want to talk about union affairs with them.

On June 9 the men came down, and they told him they didn't want the union to represent them any more. We never refused to bargain with the union. What we wanted the union to do was to show us that they had a majority in an appropriate bargaining unit. We had these negotiations to determining the appropriate bargaining unit, and they were under way even after June 9. I received a letter from
648 Mr. Schatzow on June 10, asking me to give him an agreement regarding the interstate commerce activities of Medo, and it was on June 11 that I wrote him and I said that the union does not now represent anybody, and there was no use giving the information.

And also after the conference of June 5, after the conference of June 7, after the conference of June 9, there was still the question open as to what was then the appropriate bargaining unit. We were al-

ways willing to bargain with the union who repre- 649
(319)
sented a majority in an appropriate unit.

Trial Examiner Guffey: Do you not think if the respondent had been seriously questioning the appropriateness of the unit, he would not have delved into the terms of the proposed contract?

Mr. Friedman: Yes, and you must take this into consideration in the light of the experience which we have had, and that the union has had. It was in the light of our experience in other union controversies that we felt if we approached this whole 650
matter—every question was developed between us, the number of employees in the unit, the majority in the unit, and the terms of the agreement, and then we could possibly come to an understanding without any litigation, and without any strike or anything else.

That was what we were endeavoring to do, and that is what we hoped to accomplish, as we had accomplished in the other situation where we had followed practically the same practice.

It was only because the employees voluntarily 651
came to the employer in the interim that the negotiations fell down.

Now I say that was not due to the fault of the employer. He was not responsible for that. The evidence is absolutely conclusive on that subject.

So, therefore, I cannot understand, on what basis a charge can be sustained that the employer in this case is guilty of any unfair labor practice.

Motion that Charge in Complaint be Dismissed.
Board's Exhibit 1—Charge.

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(320)

I therefore move that the charge in the complaint be dismissed. It was on the theory at the time that the charge was filed, that the union represented no employees of the employer that I made my motion at the opening of the hearing, and again at the conclusion of the Board's case, to dismiss the charge and the complaint, because I felt that there was no person in proper standing before the Board to file these charges against this employer.

653 Trial Examiner Guffey: If there is nothing further, I will declare the hearing closed.

Board's Exhibit 1—Charge.

N. L. R. B. 29
Revised 8-25-37

UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
..... REGION

654

In the Matter
of
MEDO PHOTO SUPPLY CORP.,
and
AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION LOCAL 21314, A. F. of L.

Case No. II C 37
Date filed 6/17/

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Medo

Board's Exhibit 1—Charge.

Photo Supply Corp., 15 W. 47 St., New York, N. Y. has engaged in and is engaging in unfair labor practices within 655
the meaning of Section 8, subsections (1) and (5) of said Act, in that the Firm has refused to bargain collectively with this Union and through its efforts has interfered with the legitimate organization of its employees through acts of discrimination, intimidation, and bribery.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.) 656

AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION LOCAL 21314, A. F. OF L.,
254 W. 54 St., New York, N. Y. Suite 702.
A. STOLTMAN,
A. STOLTMAN,
(Seal) President.

Subscribed and sworn to before me
this 17th day of June,
1941 at New York, N. Y. 657
Ruth Weilace,
Notary Public Bronx County No. 105
Cert. Filed in New York County No. 295
Commission Expires March 30, 1943.

Board's Exhibit 1—Complaint.

658 UNITED STATES OF AMERICA.

BEFORE THE
NATIONAL LABOR RELATIONS BOARD.
SECOND REGION.

In the Matter of: MEDO PHOTO SUPPLY CORPORATION, and AMERICAN FEDERATION OF PHOTO 659 EMPLOYEES UNION, LOCAL 21314, A. F. of L.	Case No. II-C-3762.

It having been charged by American Federation of Photo Employees Union, Local 21314, A. F. of L., 254 West 54th Street, New York, New York, that Medo Photo Supply Corporation, 15 West 47th Street, New York, New York, hereinafter referred to as "Respondent," has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set-forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter referred
660 to as the "Act," the National Labor Relations Board, hereinafter referred to as the "Board," by the Regional Director for the Second Region as agent for the Board, designated by the Board's Rules and Regulations, Series 2, as amended, Article IV, Section 1, hereby issues its complaint and alleges as follows:

1. Respondent is and has been since 1940 a corporation duly organized under and existing by virtue of the laws of the State of New York, having its principal offic[illegible]nd

place of business at 15 West 47th Street, in the City of New York, County of New York, and State of New York, and is now and has been at all the times herein mentioned continuously engaged at said place of business, hereinafter referred to as the "New York plant," in the manufacture, sale and distribution of photographic supplies and related products. 661

2. Respondent in the course and conduct of its business causes and has continuously caused a substantial amount of materials used in the manufacture, sale and distribution of photographic supplies and related products to be purchased, delivered and transported in interstate commerce from and through the states of the United States other than the State of New York to its New York plant and causes and has continuously caused a substantial part of the products manufactured, sold and distributed by it as a part of its business to be supplied, delivered and transported in interstate commerce to and through the states of the United States other than the State of New York from its New York plant. 662

3. American Federation of Photo Employees Union, Local 21314, A. F. of L., hereinafter referred to as the "Union," is a labor organization within the meaning of Section 2, subdivision (5), of the Act. 663

4. In order to insure to the employees of respondent the full benefit of their right to self-organization and to collective bargaining and otherwise to effectuate the policies of the Act, all the production employees, including packers, order pickers, receiving and shipping clerks, and errand boys, of respondent employed at its New York plant, exclusive of office, selling and supervisory employees,

664 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, subdivision (b), of the Act.

5. On or about May 23, 1941, a majority of the employees of respondent in the unit described above in paragraph 4, designated or selected the Union as their representative for the purposes of collective bargaining with respondent and at all times since that date the Union has been the representative for the purposes of collective bargaining of a majority of the employees in said unit and, by virtue of Section 9, subdivision (a), of the Act, has been
665 and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

6. On or about May 23, 1941 and subsequent thereto, the Union requested respondent to bargain collectively in respect to rates of pay, wages, hours of employment or other conditions of employment with the Union as the exclusive representative of all the employees of respondent in the unit described above in paragraph 4.

666 7. On or about June 6, 1941, respondent negotiated directly with its employees.

8. On or about May 23, 1941, and at all times thereafter, respondent did refuse and continues to refuse to bargain collectively with the Union as the exclusive representative of all the employees in the unit described above in paragraph 4.

9. Respondent, from on or about May 23, 1941 to date, has urged and persuaded its employees to refrain from

assisting, becoming members of or remaining members of the Union, and has offered its employees inducements by way of wage increases to refrain from assisting, becoming members of or remaining members of the Union. 667

10. By the acts described above in paragraphs 7 and 8, respondent did engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (5), of the Act.

11. By the acts described above in paragraphs 7, 8, and 9, and by each of said acts, respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (1), of the Act. 668

12. The activities of respondent, described above in paragraphs 7, 8, and 9, occurring in connection with the operations of respondent, described above in paragraphs 1 and 2, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. 669

13. The acts of respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (5), and Section 2, subdivisions (6) and (7), of the Act.

WHEREFORE, the National Labor Relations Board on the 14th day of April 1942, issues its complaint against Medo Photo Supply Corporation, respondent herein.

Board's Exhibit 1—Respondent's Answer to Complaint.

670

UNITED STATES OF AMERICA.

BEFORE THE
NATIONAL LABOR RELATIONS BOARD.
SECOND REGION.

In the Matter of: MEDO PHOTO SUPPLY CORPORATION, and 671 AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION, LOCAL 21314, A. F. of L.	Case No. II-C-3762.

Respondent, Medo Photo Supply Corporation, answers the complaint herein as follows:

1. Respondent denies the allegations set forth in clauses 4, 5, 7, 9, 10, 11, 12 and 13 of the complaint.

WHEREFORE, the respondent requests the dismissal of the complaint.

672

SELIGSBERG, FRIEDMAN & BERLINER,
Attorneys for respondent,
Office & Post Office Address,
29 Broadway,
New York City.

Board's Exhibit 1—Respondent's Answer to Complaint

State of New York,
County of New York. } ss.: 673

IRVING W. GOODFIELD being duly sworn, deposes and says: I am the Vice-President of the Medo Photo Supply Corporation, of 15 West 47th Street, New York City, the respondent in this proceeding. I have read the foregoing answer and know the contents thereof; the same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

674

IRVING W. GOODFIELD.

Sworn to before me this
18 day of April, 1942.
Louis M. Jenner
Louis M. Jenner, Notary Public
N. Y. Clk's No. 95, Reg. No. 3187
Bronx Co. Clk's No. 14, Reg. No. 14J43
Commission Expires March 30, 1943.
(Seal)

675

Board's Exhibit 3.

676 UNITED STATES OF AMERICA.

BEFORE THE
NATIONAL LABOR RELATIONS BOARD.
SECOND REGION.

In the Matter
of
MEDO PHOTO SUPPLY CORPORATION,
and
677 AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION, LOCAL 21314, AFL.

STIPULATION.

It is hereby stipulated by and between Medo Photo Supply Corporation, hereinafter called the Respondent, and Sidney Reitman, attorney for the National Labor Relations Board, as follows:

I.

678 Respondent is a New York Corporation which was chartered by the State of New York in the year 1917.

Its principal office and place of business is at 15 West 47th Street, New York City, New York. Since 1917 it has been engaged in the purchase, sale and distribution of photographic supplies and related products.

II.

During the course and conduct of its business for the years 1941 to 1942, (or for the last six months thereof),

the respondent purchased more than $900,000 of merchandise for the use in the sale and distribution of its products. The main products so purchased were Photographic supplies, cameras, film, etc. Approximately 13% of these products, by value, were shipped and distributed in interstate and foreign commerce from outside the State of New York to the Respondent's plant and place of business in the State of New York. The period mentioned herein is a characteristic period in the business of the Respondent. 679

III.

During the course and conduct of its business for the period from November 1, 1941 to April 30, 1942, Respondent sold products, by value, of approximately $1,000,000., the main products being photographic supplies, cameras, papers, film, etc. Approximately 30% of these products were sold and distributed in interstate commerce from the Respondent's plant and place of business from the State of New York to points outside the State of New York. The period mentioned herein is a characteristic period in the business of the Respondent. 680

IV.

The Respondent is engaged in interstate commerce within the meaning of Section 2, subdivision 6 of the National Labor Relations Act. 681

V.

The officers of the Respondent are listed below:

President—A. H. Niemeyer

Vice-President and Treasurer—Irving W. Goodfield

Secretary—W. N. Seligsberg.

Board's Exhibit 4A.

682 VI.

This stipulation is being executed for the purpose of this proceeding and related proceedings only. This stipulation is without prejudice to the right of any party to adduce additional relevant information in hearings in this matter.

MEDO PHOTO SUPPLY CORPORATION
By SELIGSBERG, FRIEDMAN & BERLINER,
Attys. for Medo etc.

SIDNEY REITMAN,
683 SIDNEY REITMAN,
Attorney,
National Labor Relations Board,
Second Region.

Board's Exhibit 4A.

I hereby make application for membership in the American Federation of Labor, and designate the American Federation of Photo Employees #21314, A. F. of L. to be
684 my collective bargaining agency.

DATE May 21, 1941
NAME (Print) Nickie Pergola
ADDRESS 99-22 32th Ave., E. Elmhurst, L. I.
FIRM Medo SALARY $12,00
SIGNATURE Nickie Pergola

AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION
LOCAL #21314, A. F. of L.
254 W. 54 St. Room 702 Circle 6-3538

Board's Exhibits 4B-4R.

Ex. No.	Name of Employee	Date	Salary	
4b	William Goshgarian	5-22-41	$19.00	685
4c	Joseph Gorgonzola	May 21, 1941	12.60	
4d	Thomas Valentine	5-21-41	15.00	
4e	Mervin Sussman	5-21-41	12.60	
4f	Angelo Seminara	5-21-41	17.00	
4g	Gerard W. Munrett	5-22-41	15.00	
4h	Stanley Abelow	5-22-41	15.00	
4i	William Koch	5-22-41	12.60	
4j	Sam Caracci	5-22-41	15.00	
4k	Charles M. Kohler	5-22-41	12.00	
4-l	Edmund Schraeder	5-23-41	12.60	686
4m	Albert Petrone	5-22-41	12.60	
4n	Robert Ritchie	5-22-41	12.60	
4-o	Raymond G. Bruchbacher	5-22-41	16.00	
4p	Edward Oliveri	5-22-41	15.00	
4q	Danny Matthews	5-22-41	13.60	
4r	Herbert C. Schroer	5-21-41	12.60	

687

Board's Exhibit 5.

688 (Cut)

AMERICAN FEDERATION OF
PHOTO EMPLOYEES UNION
LOCAL 21314

Affiliated with
American Federation of Labor
Central Trades and Labor Council

Executive Officers
A. STOLTMAN
CALVIN HILLER

254 WEST 54TH STREET
SUITE 702
NEW YORK CITY

Circle 6 3538
3539
(Label)462

May 22, 1941

689 Medo Photo Supply Co.
15 W. 47th Street
New York City

Attention: Mr. Goodfield

Gentlemen:

We are anxious to meet with you in reference to a Union Contract covering employees whom we represent.

Very truly yours,

A. STOLTMAN,
A. STOLTMAN,
President.

690

AS:NS
AFOE
20940
Registered—Return
Receipt Requested.

DEMAND THE UNION EMBLEM ON ALL PHOTOGRAPHS

Board's Exhibit 11.

Board's Exhibit 10.

691

My name is William Goshgarian and I reside at 47-32 48th St., Woodside, Long Island. I was a member of the A. F. of L. and I signed a card for the Union. Nobody forced me to sign up with the Union and I signed of my own free will. At a Union meeting I was elected as one of the members of the negotiating committee for the Union. When I signed up with the Union I wanted the Union. I wanted the Union up to the time that I received the wage increase from the Company. When I received the wage increase from the Company I felt that I did not need the Union. The wage increase is what changed my mind. If I 692 did not get the wage increase I would have stayed with the Union.

When we went to speak with the Company about wage increase we told them that if we could get our wage increases we would not have the Union. I got an increase of $2 per week. I compromised my demand of $23.00 per week to $21.00 per week.

/s/ WILLIAM GOSHGARIAN.

Board's Exhibit 11.

693

ANGELO SEMINARA

11-14-41

I was on Union committee with Wm. Goshganar, Gerard Munrett, Ray Brukbacker of Medo Photo Supply Co. I just signed a union car and went to Union hall with several other employees. A Representative there spoke to us and we told him what we wanted. Since I was one of oldest employees, I was put on committee of Union to bargain with the Company.

Board's Exhibit 11.

694 In the meantime I and some of the other boys who signed decided to see the boss before making a final decision. Same committee that saw Company lawyer saw the boss, general manager, Ben Hoppin. This occurred early in 1941. We told him what the Union offered us and we told him we would rather have a non-union shop if he would equal or come within reasonable range of the Union offer. Hoppin said would have to take up with big boss Alfred A. Niemayer. Told them to come back next morning for definite answer. Same committee returned and he didn't give full offer so committee returned to shipping room and all the
695 men gathered there and voted in open vote to accept the offer. Then the committee returned and told Hoppin the offer was accepted. One of the committee asked about job security and Hoppin replied "I think you fellows know me better than this, when you leave my office the whole matter will be closed." This was in response to question if men would be fired one or two at a time for the past union activity. Few days later Union delegate approached men and we told them we settled with the Company and weren't interested.

696 The same committee met with the bosses, union delegates and Company lawyers. Union delegates accused boss of approaching the men, but we approached him.

Hoppin said if wanted to join Union it was all right, if we didn't it was better yet. We never signed a contract with the Company, they agreed orally to give us a raise and told us it will be in next week's envelope.

I am still employed by Medo Photo Corp. in the Order Department which I consider a promotion from my position in the receiving department. My salary is still the same, however.

/s/ ANGELO SEMINARA.

Board's Exhibit 12.

UNITED STATES OF AMERICA

697

—o—

BEFORE THE NATIONAL LABOR RELATIONS BOARD

.....REGION

In the Matter of MEDO PHOTO SUPPLY CORP. and AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION LOCAL 21314 A. F. of L. Petitioner.	Case No. II R 2282

698

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name of employer Medo Photo Supply Corp.
Address 15 W. 47th St., New York City
General nature of business Photographic Supplies 699
Approximate number of employees 45 Description of the bargaining unit which petitioner claims is appropriate Non-Selling Employees, with the exception of office workers and supervisory employees.
Number and classification of employees which representatives on whose behalf petition is filed claim to represent 21 Errand Boys, Packers, Order Pickers, Receiving Clerks, and Shipping Clerks.

Board's Exhibit 12.

700 Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit None.

Any other facts which petitioner consider relevant None

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: The Employer questions that the Union represents a majority.

COPY

The undersigned further alleges that said question concerning representation is a question affecting commerce

701 within the meaning of said act.

The undersigned requests that pursuant to section 9(*c*) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION LOCAL 21314

702 A. F. of L.

A. STOLTMAN

A. STOLTMAN

President

254 W. 54th St., New York City Suite 702

Subscribed and sworn to before me this
23rd day of May, 1941 at New York, N. Y.
Rose C. Jawetz,
Notary Public, Bronx County.
Bronx Co. Clk's No. 19 N. Y. Co. Clk's No. 86.
Commission Expires March 30, 1942.

Board's Exhibit 14.

TIME FOR WEEK ENDING JUNE 6th, 19... DATE PAYABLE.....19...

NAME	No.	Hours Worked	Regular Earnings Amount	Additional Earnings for excess Hours Amount
40 hours				
Salesmen				
Geo. Horse	061-03-0108		60.—	
Geo. Dwyer	061-03-0391		63.	
Wm. J. Harrison	061-03-3116		48.—	
Thomas J. Foley out	091-03-4971		43.—	
Ed. B. Writer	110-05-8722		48.—	
I. Thorner	024-10-9466		100.—	704
			362.	
Frank Banco	092-09-6685		33.—	
Mike Pilco	068-05-1465		395.	
40 hours				
Store				
Louis M. Jenner	083-10-6388		60.—	
Peter Hansley	061-03-3110		60.—	
Robt. Merten	061-03-3120		38.—	
(Mike Pilco) Salesman	068-05-1465		33.—	
(Frank Bianco) Salesman	092-09-6685		33.—	
Arthur Moore	061-03-0392		33.—	
Philip Spiegel	063-03-3039		33.—	
Ann Fischmann	066-05-4944		32.—	705
Ruth Mann	068-03-8765		vac	
Charles McKnight out	065-16-6921		25.—	
John Niemeyer out	094-14-5129		314.	
Wm. Russell out	082-18-8046			
40 hours				
Office				
Ann Cook	061-03-0381		38.—	
Ann Arthur	083-10-8062		25.—	
Jean Kavolek	061-03-0390		27.—	
Rita Maggiolo	061-03-0389		20.—	
Dora Coletti	103-09-7088		18.—	
Grace Dunn	117-03-6403		16.—	
Charles Ganzi	061-03-3104		33.—	
Peter Oliveri	061-03-3119		27.—	
			204.	

Board's Exhibit 14.

706

TIME FOR WEEK ENDING JUNE 6, 1941 DATE PAYABLE.....19

NAME	No.	Hours Worked				Regular Earnings	Additional Earnings for excess Hours
						Amount	Amount
						204.—	
(Jay Zemans) Store	061-03-3109					22.—	
Wm. Rauk	553-09-9230					22.—	
Ruth Dalrymple	114-05-5634					vac	
Bella Bolter	087-16-3349					17.—	
Al Fraser	061-03-2946					40.—	
Laura Andreone	102-14-0310					12.—	
707 Marie Regan	090-14-2278					12.—	
Robt. Lieberman	123-01-9253					15.—	
						344	
Shipping Dept.							
Richard Raucci	100-18-4347						
Theodore Weissman	103-12-7858						
Arthur Selby out 8/26	098-16-9716						
Jack Sternberg	098-14-1007						
Abe Kemles, Mgr.	090-10-4585					45.—	
		5/28		6/4			
Louis Shabin	061-03-3107	2.25		3.05		34.—	7.11
			6/2		6/5		
Louis Oliveri	061-03-3111		3.40		3.05	32.—	6.85
Harry Bernstein	111-01-7200					23.—	
708		6/2					
Larry Bonton	061-03-3113	2.40				22.—	2.21
Wm. Gashgarian	061-03-3118					19.—	
Order Dept.							
Joe Seminora	101-03-6689					20.—	
Ray Buchbacher	116-03-2730					16.—	
John Granito	133-05-0863					17.—	
Gerald Frunrett out 8/23	108-14-9607					15.—	
Angelo Seminora	081-07-6173					17.—	
		5/28				30.—	
Ed. Oliveri	153-12-2671	2.20				15.—	1.31
		5/28		6/4			
Stanley Abelow	070-14-1113	2.45		3.05		15.—	3.27
		5/28				15.—	
Thomas Valentine	092-16-5756	2.45				15.—	1.59
~~Sam Caracci~~ out 7/13	132-10-9252					15.—	

Shipping Dept.									
Richard Raucci	100-18-4347								
Theodore Weissman	103-12-7858								
Arthur Selby out 8/26	098-16-9716								
Jack Sternberg	098-14-1007								
Abe Kemles, Mgr.	090-10-4585							45.—	
Louis Shabin	061-03-3107	5/28 2.25		6/4 3.05				34.—	7.11
Louis Oliveri	061-03-3111		6/2 3.40		6/5 3.05			32.—	6.85
Harry Bernstein	111-01-7200							23.—	
Larry Bonton	061-03-3113	6/2 2.40						22.—	2.21
Wm. Gashgarian	061-03-3118							19.—	
Order Dept.									
Joe Seminora	101-03-6689							20.—	
Ray Buchbacher	116-03-2730							16.—	
John Granito	133-05-0863							17.—	
Gerald Frunrett out 8/23	108-14-9607							15.—	
Angelo Seminora	081-07-6173							17.—	
Ed. Oliveri	153-12-2671	5/28 2.20						30.—	
Stanley Abelow	070-14-1113	5/28 2.45		6/4 3.05				15.—	1.31
Thomas Valentine	092-16-5756	5/28 2.45						15.—	3.27
~~Sam Caracci~~ out 7/13	132-10-9252							15.—	1.59
Danny Mathews	095-16-2931	5/28 2.25						15.—	
Herbert Schroer	105-12-8915	5/28 2.45	6/2 2.40	6/4 3.05				13.60	1.3.
Edmond Schroeder	114-10-1893	5/28 2	6/2 1.45					12.60	4.01
Porter								12.60	1.77
Herbert Addison	112-01-1040	5/28 2.20							
Al. Petrone	065-12-3795							24.00	2.07
Robt. Ritchie	101-12-6032							12.60	
Mervin Sussman	052-14-1190							12.60	
Wm. Koch	124-12-2287							12.60	
Nick Pergola	069-01-4154							12.60	
								12.00	
~~Wm. Nemser~~ out 8/22								490.00	31.51
~~Lester Charmats~~ out 8/16	084-14-8821								
~~Gerald Laughlin~~ out 8/2/41									
Warren Bosch	077-18-5975								
Francis Howarth out 8/20 one day	076-18-2955							2414.71	

Respondent's Exhibit 2.

June 9, 1941

Conference at 3:45 P. M. at the office of Seligsberg & Lewis 709

Between Messrs. Stoltman and Hiller, for the Union

Accompanied by Messrs. William Goshgarian
Ray Bruchbacher
Jerry Munrett
Angelo Seminari

And Messrs. Niemeyer
Goodfield
Hoppin
William E. Friedman
W. N. Seligsberg 710

When the meeting opened Mr. Seligsberg asked Mr. Stoltman what was before the meeting, and he said the negotiation of a contract.

Mr. Seligsberg asked him whether he still ^ claimed to represented a majority of the Basement Department at Medo, and he said that he had the signatures from a majority, and they wanted to negotiate a contract. W. N. S. Corrected before any signature W. N. S.

Mr. Seligsberg asked him what kind of a contract it would be with an organization that did not even represent a majority of one department and that probably the way to settle the matter was to have the election which they had originally asked. He said, and repeated it on several occasions, that they did not want an election; they stood on the signed cards; that if the company would not negotiate a contract, the Union would fight the matter if it took fifty years to get into Medo. 711

Respondent's Exhibit 2.

712 Mr. Seligsberg asked the four employees individually whether anybody had inspired them to talk to Mr. Hoppin on Saturday and they said no, but that they had been talking among themselves and decided they did not want a Union, but wanted to speak for themselves.

Mr. Stoltman refused several times to proceed with the election for which petition had been made, and stated that they would expect to picket and boycott Medo and its customers, and that he was willing to have a record made of that statement.

713 At that point, Mr. Stoltman and Mr. Hiller left the meeting.

Mr. Seligsberg then asked the four employees how it was that they came to ask an interview with Mr. Hoppin on Saturday and Mr. Seminari stated that the men had been talking among themselves; that there were certain things about the Union they didn't like; that they heard that in addition to the dues which they might have to pay, there might be assessments and they might be called out on sympathetic strikes to help workers for competitors of Medo, and that they decided among themselves that they would be treat-
714 ly justly by the company; that they had been told that the company could not discuss unionism with the employees, but that the employees were at all times free to come and talk to their employers.

Mr. Seminari now states that he had been told by Mr. Stoltman that it was against the law for anybody in the company to talk to them against the Union, but the men understood that they could approach the bosses themselves.

Respondent's Exhibit 2.

Each of the four employees present assured everybody else present that this discussion had initiated among themselves, principally among the four who were present, and that they themselves spoke to the rest of the employees, and that the general feeling was that if they could get their demands without a Union that they would probably fare better. 715

Summary of Mr. Hoppin's Statement of Interviews with Various Employees, dictated in the presence of

Mr. Niemeyer
Mr. Goodfield
Mr. Hoppin 716
Mr. Goshgarian
Mr. Bruchbacher
Mr. Munrett
Mr. Seminari
Mr. Friedman
Mr. Seligsberg

on June 9, 1941.

On Saturday morning, June 7th, Mr. Bruchbacher came to Mr. Hoppin and said that some of the boys in the basement would like to discuss the situation with him, would Mr. Hoppin receive them. Mr. Hoppin said yes and arranged to see them shortly after closing time at 1 o'clock. 717

A little after 1: on Saturday the following men came up:

Mr. Bruchbacher
Mr. Seminari
Mr. Goshgarian
Mr. Munrett

Respondent's Exhibit 2

718 Herbert Schroer
Stanley Abelow
William Koch
Sam Caracci
Dan Matthews
Nick Pergola
John Granito
Frank Bianca

The men said that they also spoke for

Tom Valentine
Al Petrone
719 Ed Olivieri
Melvin Sussman

who were either out or on vacation.

They also said that they spoke for

E. Schroeder
Bob Ritchey

who were out on the truck.

Mr. Bruchbacher said to Mr. Hoppin "You've heard about the Union". Mr. Hoppin said that he was not interested in discussing the Union, but asked the men to tell
720 him what the interview was about.

Mr. Bruchbacher said "We were trying to form a Union, but have decided we don't want it; we want more money, but otherwise we are satisfied with working conditions".

They then mentioned the detailed amounts which were requested for the various groups:

For the shipping, receiving and order department, that is to say, for

Respondent's Exhibit 2.

Schroer
Abelow
Koch
Valentine
Caracci
Matthews
Olivieri $18. 721

For the errand boys
Petrone
Pergola
Sussman
Schroeder 722
Ritchey $15.

For the senior employees, that is to say
Bruchbacher
Seminari
Goshgarian
Munrett $23.

Mr. Bruchbacher then introduced Seminari, Goshgarian and Munrett as the representatives of the group who were to have spoken for the Union, and they made some comments on the fact that they were satisfied with their jobs except for the pay, as were the other men, and that otherwise it was a decent concern to work for and conditions were not objectionable. 723

Mr. Hoppin told them that this was Saturday and Mr. Niemeyer was away, and he would have to make the decision, but if they came back at 11: o'clock on Monday, he would have an answer for them, if he could.

Respondent's Exhibit 2.

724 As they were leaving, Mr. Seminari said to Mr. Hoppin in substance, we came of our own accord, no one influenced us, and we think we can settle our affairs ourselves.

On June 9th (Monday) at 11: they came back and Mr. Hoppin said he had discussed the matter with the management and that they agreed to all the raises requested, except that they were willing to raise

Bruchbacher
Seminari
Goshgarian
Munrett

725 to $21. instead of $23. The men expressed themselves as satisfied.

At noon envelopes were distributed to the employees mentioned and other employees throughout the plant, advising them of raises in wages, effective as of the current week.

RAYMOND G. BRUCHBACHER
JERRY MUNRETT
ANGELO SEMINARI
726 IRVING W. GOODFIELD
WILLIAM GOSHGARIAN
A. H. NIEMEYER
BENJAMIN L. HOPPIN
WILLIAM E. FRIEDMAN
W. N. SELIGSBERG

Respondent's Exhibit 3.

TIME FOR WEEK ENDING AUGUST 2, 1941 DATE PAYABLE.....19... 727

NAME	No.	Hours Worked	Regular Earnings Amount	Additional Earnings for excess Hours Amount	
40 hours					
Salesmen					
Geo. Horse			120.—		
Geo. Dwyer			60.—		
Wm. J. Harrison			63.—		
			48.—		
Thomas J. Foley out			90.—		
Ed. B. Writer			45.—		728
[illegible] Thorner			48.—		
Frank Bianco			100.—		
			vac		
Mike Pilco			574.—		
40 hours					
Store					
Louis M. Jenner			62.50		
			125.—		
Peter Hansley			62.50		
Robt. Merten			40.—		
(Mike Pilco) Salesman			36.—		
(Frank Bianco) Salesman					729
Arthur Moore			36.—		
Philip Spiegel			36.—		
Ann Fischmann			out ill		
Ruth Mann			20.—		
Charles McKnight out			27.—		
John Niemeyer out			20.—		
Wm. Russell out			15.—		
40 hours			480.—		
Office					
Ann Cook			38.—		
Ann Arthur			28.—		
Jean Kavolek			vac		
Ruth Maggiolo			22.—		
Dora Colletti			20.—		
			38.—		
Grace Dunn			19		
Charles Ganzi			vac		
Peter Oliveri			29		
			194		

[illegible] Hoppin, [illegible]uenced [illegible] and Mr. [illegible]anage-[illegible]ted, ex- [illegible]ives as [illegible]loyees [illegible]nt, ad- [illegible]urrent [illegible]R

Respondent's Exhibit 3.

DATE PAYABLE.....19...

730 Overtime

TIME FOR WEEK JULY 26th ENDING AUGUST 2, 1941

NAME	No.	Hours Worked Mon. 21	22	23	24	25	Sat. 26	Regular Earnings Amount	Additional Earnings for excess Hours Amount
								194	
(Jay Zemans) Store								25	
Wm. Rauk								25.—	
Ruth Dalrymple								20.—	
Bella Bolter								20.—	
Al Fraser								45.—	
731 Laura Andreone								15.—	
Marie Regan								15.—	
Robt. Lieberman								18.—	
								377.—	
Shipping Dept.									
Richard Raucci									
Theodore Weissman									
Arthur Selbey out 8/26									
Jack Sternberg									
Abe Kemles, Mgr.				5.15 8.43	5.15 7.50			vac	
								74.—	
Louis Shabin								37.—	8.38
Louis Oliveri	3 hrs. ½ earlier in morning	5.15 8.02	5.15 7.44			5.15 7.03		35.—	13.22
732								46.—	
Harry Bernstein								23.—	
Larry Bonton								25	
Wm. Gashgarian								21.—	
Order Dept.									
Joe Seminora								22.—	
Ray Buchbacher								21.—	
John Granito								21.—	
Gerald Munrett out								vac	
Angelo Seminora								21.—	
Ed. Oliveri								18.—	
Stanley Abelow								18.—	
Thomas Valentine								18.—	
~~Sam Caracci~~ out 7/									
Danny Mathews								18.—	
Herbert Schroer								18.—	
Edmond Schroeder				5.15 8.42	5.15 7.51			18.—	4.13

												194	
	(Jay Zemans) Store											25	
	Wm. Rauk											25.—	
	Ruth Dalrymple											20.—	
	Bella Bolter											20.—	
	Al Fraser											45.—	
731	Laura Andreone											15.—	
	Marie Regan											15.—	
	Robt. Lieberman											18.—	
												377.—	
	Shipping Dept.												
	Richard Raucci												
	Theodore Weissman												
	Arthur Selbey out 8/26												
	Jack Sternberg												
	Abe Kemles, Mgr.						5.15	8.43	5.15	7.50		vac	
												74.—	
	Louis Shabin											37.—	8.38
	Louis Oliveri	3 hrs. ½ earlier in morning	5.15	8.02	5.15	7.44					5.15	7.03	35.— 13.22
732													46.—
	Harry Bernstein												23.—
	Larry Bonton												25
	Wm. Gashgarian												21.—
	Order Dept.												
	Joe Seminora												22.—
	Ray Buchbacher												21.—
	John Granito												21.—
	Gerald Munrett out												vac
	Angelo Seminora												21.—
	Ed. Oliveri												18.—
	Stanley Abelow												18.—
	Thomas Valentine												18.—
	~~Sam Caracci~~ out 7/												
	Danny Mathews												18.—
	Herbert Schroer												18.—
	Edmond Schroeder						5.15	8.42	5.15	7.51			18.— 4.13
	Porter												
	Herbert Addison												vac
	Al. Petrone												15.—
	Robt. Ritchie				5.15	6.15	5.15	7.15					15.— 1.68
	Mervin Sussman												15.—
	Wm. Koch												18.—
	Nick Pergola												15.—
	~~Wm. Nemser~~ out												15.—
	~~Lester Charmata~~ out												15.—
	~~Gerald Laughlin~~ out												15.—
												577.—	27.41
	Warren Bosch											27.41	
	Francis Howarth out 8/20 one day											2783.—	

Intermediate Report of Trial Examiner William F. Guffey, Dated June 8, 1942.

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UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.
Trial Examining Division.
Washington, D. C.

In the Matter of MEDO PHOTO SUPPLY CORPORATION and AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION, LOCAL 21314, A. F. of L.	Case No. II-C-3762.

734

Mr. Sidney Reitman, for the Board.
Seligsberg, Friedman & Berliner, by Mr. William E. Friedman, of New York City, for the respondent.
Mr. Al Stoltman, of New York City, for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed on June 17, 1941, by American Federation of Photo Employees Union, Local 21314, affiliated with the American Federation of Labor, herein 735
called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region (New York City), issued its complaint, dated April 14, 1942, against Medo Photo Supply Corporation, New York City, herein called the respondent, alleging that the respondent had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449,

736 herein called the Act. Copies of the complaint and accompanying notice of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent: (1) from on or about May 23, 1941, to the date of the complaint, urged and persuaded its employees to refrain from assisting, or becoming or remaining members of the Union, and offered the employees wage increases to so persuade them; (2) on or about May 23, 1941, and at all times thereafter, re-
737 fused, upon request, to bargain collectively with the Union as the exclusive representative of the respondent's employees in an appropriate unit, although the Union on that date and at all times thereafter was the properly designated bargaining representative of a majority of the employees in the appropriate unit; (3) on or about June 6, 1941, negotiated directly with the employees; and (4) by these acts interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

738 In its answer, dated April 18, 1942, the respondent denied that it had engaged in the unfair labor practices alleged. The answer contained no averments as to the allegations concerning interstate commerce, the Union's request, and the respondent's refusal to bargain collectively. Counsel for the respondent however, stated on the record that allegations of the complaint not specifically denied are deemed admitted.

Pursuant to notice, a hearing was held at New York City, on April 30 and May 1, 1942, before the undersigned,

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the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, the Union by its representative, and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. The respondent, at the beginning of the hearing, at the close of the Board's case, and at the close of the respondent's case, moved to dismiss the complaint. The undersigned denied these motions. During the hearing the undersigned, without objection, granted the Board's motion 740
to amend the pleadings to conform with the proof. At the conclusion of the hearing, counsel for the Board and the respondent presented oral argument on the record[1] before the undersigned. The parties were advised that they might file briefs with the undersigned. All parties waived this right.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT 741

I. The Business of the Respondent

The respondent, a New York corporation having its principal office and place of business in New York City, is engaged in the purchase, wholesale and retail sale, and distribution of photographic supplies and related equipment such as cameras, film, and papers. During the period from November 1, 1941, to April 30, 1942, a typical

[1] Pages 296-320 of the transcript of testimony.

742 period, the respondent purchased more than $900,000 worth of merchandise, approximately 13 percent of which was purchased at and shipped from points outside the State of New York to the respondent's place of business in New York City. During the same period the respondent sold approximately $1,000,000 worth of photographic supplies, about 30 percent of which was sold and shipped by the respondent to customers located outside the State of New York. The respondent admits that it is engaged in interstate commerce within the meaning of the Act.

743 ## II. The Organization Involved

American Federation of Photo Employees Union, Local 21314, is a labor organization, affiliated with the American Federation of Labor, admitting to membership persons engaged by numerous employers in many phases of the photographic supply and related industries, including the employees of the respondent.

III. The Unfair Labor Practices

A. *The refusal to bargain collectively; intereference, restraint, and coercion*

744

1. The appropriate unit

The respondent employs approximately 70 employees, including some "outside" salesmen, all of whom work at or out of the same place of business in New York City which includes a retail store and a shipping and receiving department.

The complaint alleges that all of the production employees including packers, order pickers, receiving and

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shipping clerks, and errand boys employed at the respondent's New York place of business, but excluding office, selling, and supervisory employees, constitute an appropriate unit.[2] The respondent in its answer denied this allegation and at the hearing contended that all of its employees constitute an appropriate unit.

The employees in the shipping and receiving department are engaged in the receiving of incoming merchandise and the packing, shipping, and delivery of wholesale and retail orders. They do not come in direct contact with the customers and need no working knowledge of the merchandise 746
they handle. They work in a different section of the building from that in which the other employees work and, generally, do not come in contact with the other employees. The "outside" salesmen and the employees in the retail store, on the other hand, deal directly with the customers and must have a good working knowledge of the merchandise they sell. They are, unlike the employees in the shipping and receiving department, "white collar" employees making substantially higher salaries than do the employees of the shipping and receiving department. The
747
Union, and the employees of the shipping and receiving department have indicated a preference for a unit consisting of the shipping and receiving department employees.[3] There is no persuasive reason for ignoring this preference.

[1] At the hearing the department employing all of the employees included in the unit claimed to be appropriate was referred to as the shipping and receiving department. For purposes of brevity it will be so referred to herein.

[2] The finding with respect to the employees' indication of a preference is based upon Stoltman's uncontradicted testimony, which the undersigned credits, that on May 21 and again on May 29, the employees so informed the Union.

748 The Union, moreover, has limited its organizational activities to those employees which the Union claims constitute an appropriate unit. The undersigned is of the opinion that a unit which coincides with the extent of the Union's organization is appropriate. To find otherwise would deprive such employees of the benefits of collective bargaining until the remaining employees organized.[4]

The undersigned finds that all the production employees including packers, order pickers, receiving and shipping clerks, and errand boys employed in the respondent's New 749 York place of business, excluding office, selling, and supervisory employees, at all times herein material constituted and they now constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

2. Representation by the Union of a majority in the appropriate unit

On May 23, 1941, there were 26 employees in the respondent's shipping and receiving department which has been found herein to constitute an appropriate unit. Of 750 this number 18 had, on May 23, signed membership application cards designating the Union as their collective bargaining representative.[5] It is thus clear that on that date the Union was the duly designated collective bargaining representative of a majority of the respondent's employees in an appropriate unit.

[4] See *Matter of The Patterson-Kelly Company, Inc.*, etc., 38 N. L. R. B. 1229.

[5] Of these cards 6 were signed on May 21, 11 on May 22, and 1 on May 23.

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The undersigned finds that on May 23, 1941, and at all material times thereafter, the Union was the duly designated representative of a majority of the employees in the aforesaid appropriate unit, and that, by virtue of Section 9 (a) of the Act, the Union was at all times material herein the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

3. The refusal to bargain

752

a. *Chronology of events*[6]

On May 22, 1941, the Union sent a letter to the respondent requesting it to negotiate a contract covering the employees represented by the Union. On May 23, Al Stoltman, the Union's president, by telephone, informed Irving W. Goodfield, the respondent's vice president and treasurer, that the Union represented the respondent's employees and requested an opportunity to negotiate an agreement on their behalf. Goodfield replied that A. H. Niemeyer, the respondent's president, was out of town, and that negotiations would have to await his return, which was expected "very shortly, [within] a week or so, or two weeks." On the same day the Union filed with the Board a petition for investigation and certification, claiming as appropriate the unit found above to be appropriate.

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On June 4, representatives of the Board, the respondent, and the Union conferred at the Board's Regional Office with respect to the Union's petition for certification. William E. Friedman, one of the respondent's attorneys, questioned the appropriateness of the requested unit and stat-

[6] The facts as related in the first two paragraphs of this section are based upon Stoltman's uncontradicted testimony, which the undersigned credits.

754 ed that in his opinion only a formal hearing before the Board could solve the problem. When Stoltman asked Friedman if there was any way "to avoid a long delay of going to a formal hearing," Friedman replied that he would arrange a conference for the purpose of considering the unit question, and that if the respondent and the Union could agree as to the appropriate unit, the respondent would consent to the Union's being certified and the parties would "automatically go into the process of bargaining."

755 On June 5, in accordance with Friedman's commitment the previous day, representatives of the Union and the respondent, including Niemeyer, Goodfield, and Benjamin L. Hoppin, the respondent's general manager, met at the office of the respondent's attorneys. Concerning what occurred at this conference Stoltman testified in substance as follows: When Stoltman stated that the Union desired to be certified by the Board as the representative of the employees in the above described unit, Walter M. Seligsberg, one of the respondent's attorneys, asked to see the Union's proposed contract and stated that the respondent

756 "certainly is not going to buy a pig in a poke • • • by consenting to the Union's being certified, and then finding out what they had to bargain for." Seligsberg said that if the Union's proposed contract was "too tough" the respondent would "have to employ all the means we know how, and we will have to fight you through the Board and try to straighten the thing out." When Stoltman questioned the "ethics" of this procedure, Seligsberg answered, "You should understand those things, Stoltman. It is not a question of ethics but it is a question of being practical." Seligsberg then stated that if the proposed contract "constituted

a reasonable basis for negotiations," the respondent would consent to the Union's being certified after a check of its cards or an election and that the respondent would then bargain with the Union. 757

With this understanding Stoltman submitted a proposed contract. After examining it Seligsberg stated, "I believe that the contract is a basis for negotiations, and we can arrive at an agreement." He then asked how many employees had signed union cards and requested the Union to present its cards as proof of its claim. When Stoltman stated that he had 18 signed cards and would submit them for a check by an impartial third person, but would not submit them to the respondent, Seligsberg replied that he had no real doubt concerning the Union's majority status and when Stoltman, nevertheless, insisted that the Union be certified in accordance with the agreement of the parties, Seligsberg stated, "Oh, there is no sense in us going through all that. After all, you have got all you wanted, and we are going to negotiate with you * * *. Let us sit down and negotiate. That is the primary thing you are after." 758

Seligsberg did not deny the above statements which Soltman attributed to him and his testimony concerning this conference, in most respects, corroborates Stoltman's. Seligsberg testified that at the June 5 conference he told Stoltman that the Union's demands constituted "the crux of the matter" and that if the Union had a majority "then maybe we can negotiate an agreement without wasting a lot of time." He also testified that he asked to see the Union's proposed contract for the purpose of determining whether the Union was "demanding such extreme things that we 759

760 would have to fight from the start." When asked to explain the nature of the "fight" the respondent would wage against the Union, Seligsberg testified: "Well, we would use all the ways that the law gave us to avoid having to deal with an improper unit, or with a unit whose propriety was questionable, or with a unit without proof that the bargainers represented the majority."

It is thus apparent from Seligsberg's testimony alone that the respondent was not standing upon its asserted doubts as to the appropriateness of the unit or the Union's
761 majority status but was, on the contrary, preparing to oppose the Union on those grounds in the event its demands were unacceptable. The undersigned so finds. The respondent's position as thus stated by Seligsberg is patently inconsistent with the respondent's claim that it entertained *bona fide* doubts concerning the appropriateness of the unit and the Union's majority. Stoltman's testimony, which Seligsberg did not deny, and which the respondent did not otherwise contradict, rings true when sounded against Seligsberg's admitted purpose in asking for the Union's proposed contract. By the same test Seligsberg's fur-
762 ther testimony that at the close of the June 5 conference the appropriateness of the unit and the majority status of the Union remained open for further discussion strikes a discordant note. The undersigned, upon these considerations, and upon all the evidence, credits Stoltman's testimony and finds that on June 5 the respondent waived its objections, if any, to the unit, conceded that the Union represented the necessary majority, recognized the Union and agreed to confer again with the Union the following Monday, June 9, for the purpose of discussing the Union's demands.

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On the morning of June 7, Ray Bruchbacher, one of the employees who signed a union card, went to Hoppin's office and requested an opportunity for a group of the employees of the shipping and receiving department to confer with him. Hoppin replied that he would receive the employees that afternoon after working hours. Earlier the same morning Bruchbacher told William Goshgarian, another member of the Union, that "We will go up and see if we can get a raise, if we don't get a raise, we won't bother to do nothing about it," and that the employees, in that event, would remain members of the Union. In the afternoon 12 of the employees who had signed union cards went to Hoppin's office and, upon Hoppin's inquiry as to why they were there, stated that they and the remaining 6 members of the Union, who were unable to be present, had decided among themselves that they had no desire to belong to the Union if they could obtain wage increases through their own efforts. They then submitted to Hoppin a list of proposed wage increases which were substantially the same as those demanded by the Union which Goshgarian had helped to formulate, and which were included in the proposed contract submitted to the respondent at the June 5 conference. Hoppin refused to discuss the Union,[7] but stated that he would consider the request for wage increases with President Niemeyer upon the latter's return to the store the following Monday morning, and told the

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[7] Angelo Seminara, an employee, testified that at the June 7 conference Hoppin stated, "If you want to join the Union, that is all right, and if you don't, it is better yet." Hoppin denied making this statement, and was corroborated in his denial by Bruchbacher. In view of these denials, and upon all the evidence, the undersigned does not credit Seminara's testimony on this point and finds that Hoppin did not make the statement attributed to him by Seminara.

766 employees to come in again at that time for an answer. On Monday, June 9, Hoppin, Niemeyer, and Goodfield, all of whom were present at the June 5 conference when the Union submitted its proposed contract containing its wage demands, discussed the employees' request for wage increases. Shortly thereafter, a committee of four of the employees who had conferred with Hoppin on June 7 called upon Hoppin who informed them that their proposed wage increases had been granted substantially as requested, effective immediately. The committee conveyed Hoppin's message to
767 the other employees who agreed to accept the increases which the respondent was willing to grant. The committee then informed Hoppin that, "the boys downstairs felt that they did not need the union, and we would rather stay out." At about the same time the respondent announced a general wage increase.

During the afternoon of June 9, representatives of the respondent and the Union, and four employees who were present upon the Union's request, conferred in the office of the respondent's attorneys. On the way to the conference the four employees manifested an unfriendly attitude to-
768 ward Stoltman and stated to him that the employees of the shipping and receiving department no longer desired the Union to represent them. None of the employees had revoked their membership in the Union or their designation of it as their representative prior to June 9. Even then only 4 of the 18 who had joined the Union informed Stoltman that they no longer desired to be represented by the Union. When Stoltman, at the beginning of the conference, stated that the parties were present for the purpose of negotiating an agreement, Seligsberg replied that he un-

derstood that the Union no longer represented a majority of the employees and for that reason the respondent could not at that time negotiate an agreement with the Union, but that he would consent to the holding of an election and that if the Union could thus prove that it represented a majority of the employees, he "would see what could be done." The four employees present again stated that they no longer desired to remain members of the Union. The representatives of the Union then stated that they would continue their efforts to organize the respondent's employees and, thereupon, withdrew from the conference. 769 770

b. *Concluding findings*

Upon the facts here disclosed, the respondent has refused to bargain collectively with the freely chosen representatives of its employees. On May 23, the date of the Union's first request for recognition, a majority of the employees in the appropriate unit had designated by the Union as their collective bargaining representative. The Union thus became the exclusive representative of all of the employees in the unit. Although the respondent had expressed some doubt as to the appropriateness of the unit and the Union's majority status, it did, on June 5, as has been found, waive its objections to the unit, stated that it was satisfied that the Union represented a majority in the unit, and agreed to negotiate with the Union. The respondent thus recognized the Union as the representative of the employees in the appropriate unit. 771

On June 7, the respondent, notwithstanding its clear recognition of the Union two days earlier, bargained directly with a group of employees concerning wage increases,

772 one of the most fundamental objectives of collective bargaining. Clearly to bargain directly with one's employees is not to bargain with their designated exclusive representative.[8] The employees, as found above, had not revoked their designation of the Union as their collective bargaining representative and there is no evidence that the Union had by any other means ceased to represent the employes. "To permit the employer to go behind the chosen bargaining agent and negotiate with the employees individually, or with their committees, in spite of the fact that they had not
773 revoked the agent's authority, would result in nothing but disarrangement of the mechanism for negotiation created by the Act, disparagement of the services of the union, whether good or bad, and acute, if not endless, friction, which it is the avowed purpose of the Act to avoid or mitigate." [9] In these circumstances, for the respondent to deal directly with its employees was to deny to the Union its statutory status and was, therefore, a refusal to bargain collectively.

The validity of this conclusion is not altered, as the re-
774 spondent contends, by the mere fact that the direct dealing emanated from the employees rather than from the respondent. The gist of the respondent's violation of the Act is its direct negotiations with the employees after they had designated, and the respondent had recognized, an exclusive bargaining representative. It is, therefore, immaterial from whence came the impulse to deal directly.[10] The

[8] *N. L. R. B. v. Highland Shoe, Inc.*, 119 F. (2d) 218, 221 (C. C. A. 1).

[9] *N. L. R. B. v. Acme Air Appliance Company, Inc.*, 117 F. (2d) 417, 420 (C. C. A. 2). See also: *Inland Lime and Stone Company v. N. L. R. B.*, 119 F. (2d) 20, 22 (C. C. A. 7).

[10] *Highland Shoe* case, *supra*

Huch Leather case,[11] upon which the respondent relies, is distinguishable on its facts. In that case the employer had refused to accept the Union's evidence of its majority and had refused to recognize the Union. Moreover, there were no pending negotiations between the employer and the Union; negotiations were awaiting the outcome of the union's petition for certification. In those circumstances the employer was not bound to bargain with any particular representative and hence his direct negotiations with his employees was not a refusal to bargain within the meaning of the Act. 775

While not necessary to the decision herein, it may be mentioned that the seriousness of the respondent's unlawful conduct was enhanced by the nature of the employees' proposal. They stated that they did not need the Union *if* the respondent would give them a wage increase. The consideration which they offered for the requested increase was their withdrawal from the Union. In short, they sought to use their union membership as stock-in-trade for bargaining purposes and at the same time hold to their union membership in the event they were helpless without it. For the respondent to become a party to such a proposal was to engage in conduct which gave positive assurance of the destruction of the Union. Employers and employees may not be permitted to respect or ignore according to their convenience the dignity of a properly designated exclusive collective bargaining representative. To do so would make the bargaining representative a mere bludgeon in the hands 776 777

[11] *Matter of Huch Leather Co.* and *General C. I. O. Union*, 11 N. L. R. B. 394.

778 of self-interested employees rather than an instrumentality for the peaceful and effective handling of employer-employee relations.

In view of the foregoing, and upon the entire record herein, the undersigned finds that the respondent on June 7, 1941, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.[12]

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IV. The Effect of the Unfair Labor Practice Upon Commerce.

The activities of the respondent as set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

780 [12] The record does not reveal any other interference, restraint, or coercion. Mervin Sussman, an employee, testified that, after he had signed a union card and prior to the granting of the wage increases, Lou Schabin stated that the employees would be "better off" without a union because they "would have to pay dues" without receiving any benefits and that they "wouldn't have as much freedom" as they have without a union. Schabin is one of the respondent's higher paid shipping clerks. He helps load the delivery trucks, determines what packages should be put on the trucks, and gives the errand boys the packages they are to deliver. While the question is not free from doubt, the undersigned, upon the record here made, is not convinced that Schabin is a supervisory employee. The undersigned finds, therefore, that the statement attributed to him was not employer interference with the employees' rights to self-organization.

Intermediate Report of Trial Examiner, William F. Guffey, Dated June 8, 1942.

V. The Remedy

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Since it has been found that the respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and that it take certain affirmative action in order to effectuate the policies of the Act.

Having found that the respondent refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, the undersigned will recommend that the respondent upon request bargain collectively with the Union.

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Upon the basis of the foregoing findings of fact and upon the entire record of the case, the undersigned makes the following:

Conclusions of Law

1. American Federation of Photo Employees Union, Local 21314, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All the production employees including packers, order pickers, receiving and shipping clerks, and errand boys employed in the respondent's New York place of business, excluding office, selling, and supervisory employees, constitute a unit appropriate for purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

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3. American Federation of Photo Employees Union, Local 21314, affiliated with the American Federation of Labor, was, on May 23, 1941, and at all material times there-

784 after has been, the exclusive representative of all the employees in said unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with American Federation of Photo Employees Union, Local 21314, as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act.

785 5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclu-
786 sions of law, the undersigned recommends that the respondent, Medo Photo Supply Corporation, New York, New York, its officers agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with American Federation of Photo Employees Union, Local 21314, affiliated with the American Federation of Labor, as the exclusive representative of all the production employees in the respondent's New York place of business including packers, order pickers, receiv-

787 ing and shipping clerks, and errand boys, but excluding office, selling and supervisory employees;

(b) Engaging in like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act,[13]

788 2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with American Federation of Photo Employees Union, Local 21314, affiliated with the American Federation of Labor, as the exclusive representative of all the production employees in the respondent's New York place of business, including packers, order pickers, receiving and shipping clerks, and errand boys, but excluding office, selling and supervisory employees, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

789

(b) Post immediately in conspicuous places in its New York place of business and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it has been recommended in paragraphs 1 (a) and (b) of these recommendations that it cease and desist; and

[13] See *N. L. R. B. v. Express Publishing Company*, 312 U. S. 426, and *Lebanon Steel Foundry*, 33 N. L. R. B., No. 58.

790

(2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Second Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the Na-
791 tional Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended—any party may within thirty (30) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report, or to any other part of the record
792 or proceeding (including rulings upon all motions or objections), as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within twenty (20) days after the date of the order transferring the case to the Board.

WILLIAM F. GUFFEY, JR.,
WILLIAM F. GUFFEY,
Trial Examiner.

Dated: June 8, 1942.

Order Transferring Case to the National Labor Relations Board, Dated June 10, 1942.

793

UNITED STATES OF AMERICA.

BEFORE THE
NATIONAL LABOR RELATIONS BOARD.

In the Matter of MEDO PHOTO SUPPLY CORPORATION, and AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION, LOCAL 21314, A. F. of L.	Case No. C-2219 II-8-3762

794

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington,

IT IS HEREBY ORDERED, pursuant to Article II, Section 32, of National Labor Relations Board Rules and Regulations—Series 2, as amended, that Case No. II-C-3762 be, and it hereby is, transferred to and continued before the Board as Case No. C-2219. 795

Dated, Washington, D. C., June 10, 1942.

By direction of the Board:

BEATRICE M. STERN,
BEATRICE M. STERN,
(Seal) Executive Secretary.

Respondent's Letter, Dated June 20, 1942, Requesting Oral Argument Before the Board.

796

SELIGSBERG, FRIEDMAN & BERLINER
(Seligsberg & Lewis)
29 Broadway
New York City

20th June 1942.

National Labor Relations Board,
Washington, D. C.

re: Medo Photo Supply Corp. and American Federation of Photo Employees Union—Local 21314 A. F. of L.

797 Case No. C-2219 (II-C-3762)

Gentlemen:

We are the attorneys for Medo Photo Supply Corporation in the above entitled matter.

On June 11th, 1942, we received by mail a copy of the intermediate report of William F. Guffy, Jr., Trial Examiner, dated June 8th, 1942, and a copy of your order transferring the case to the Board dated June 10th, 1942.

798 Pursuant to §83 of your Rules and Regulations, we hereby request permission to argue orally before you our exceptions and objections to the Trial Examiner's report. We shall file with you our exceptions and brief on or before July 10th, and we shall appreciate your fixing a hearing date for oral argument some time thereafter.

Will you please advise us as to the hearing date as soon as possible.

Very truly yours,

SELIGSBERG, FRIEDMAN & BERLINER,
By /s/ WILLIAM E. FRIEDMAN
WILLIAM FRIEDMAN.

WEF:EWN

Respondent's Exceptions to Intermediate Report.

UNITED STATES OF AMERICA. 799

BEFORE THE

NATIONAL LABOR RELATIONS BOARD.

In the Matter of MEDO PHOTO SUPPLY CORPORATION, and AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION, LOCAL 21314, A. F. of L.	Case No. C-2219 II-C-3762

800

Sirs:

PLEASE TAKE NOTICE, that the respondent Medo Photo Supply Corporation excepts to the intermediate report of William F. Guffey, Jr., Trial Examiner, dated June 8th, 1942, and to the record and proceeding herein, as follows:

1. To the denial of respondent's motions to dismiss the complaint made at the beginning of the hearing, at the close of the Board's case and at the close of respondent's case. 801

2. To the admission in evidence of Board's Exhibits 4G to R without proof of the genuineness of the signatures.

3. To the refusal to admit in evidence proof that the union does not now represent a majority of the employees in respondent's shipping and receiving department.

802 4. To the finding of fact that the respondent's employees indicated a preference for a unit consisting of the employees of the shipping and receiving department, because the evidence is directly to the contrary.

5. To the finding of fact and conclusion of law that such a unit is appropriate for purposes of collective bargaining, in that there is insufficient evidence to support said finding and conclusion.

6. To the findings and implications from other findings that the unit requested by the union is a "production"
803 unit.

7. To the finding that the workers in that unit do not require any familiarity with the mechandise they are handling, and to the failure to find that the workers in the unit requested, are mostly young men or boys inexperienced and easy to influence, and that their joining the union was an impulsive act which they regretted after one of their members had discussed the matter with his family and had been persuaded by his family that there was no necessity for unionization and no benefit to be derived therefrom, and persuaded his fellows to the same conclu-
804 sion.

8. To the failure to find and conclude that by granting the prayer of the complaint, the Trial Examiner is compelling the respondent to force certain of its employees into a particular union despite their express objection thereto.

9. To the finding of fact that on May 22nd, 1941, and at all material times thereafter the union was the duly designated and exclusive representative of all the employees in

the respondent's shipping and receiving department for the purpose of collective bargaining, because the evidence is directly to the contrary. 805

10. To the finding of fact that respondent, by its counsel, at a meeting on June 5th, 1941, waived its objection to the appropriateness of the unit consisting solely of employees in the respondent's shipping and receiving department and to the union's majority status, in that the evidence is to the contrary.

11. To the finding of fact that respondent, by its counsel, on June 5th, 1941, recognized the union and agreed to confer and negotiate with the union on June 9th, 1941, for the sole purpose of discussing the union's demands, in that the evidence is to the contrary. 806

12. To the finding of fact that the respondent has refused to bargain collectively with the freely chosen representatives of its employees on June 7th, 1941, and at all times thereafter or at any other time or times, because there is no evidence to support such finding.

13. To the finding of fact that the employees of the respondent did not revoke their designation of the union as their collective bargaining representative, in that the evidence is directly to the contrary. 807

14. To the finding of fact that there is no evidence that the union had by any means ceased to represent the employees of the respondent, in that the evidence is directly to the contrary.

15. To the findings implied by the conclusions and recommendations that employees may not change their minds as to joining or not joining a union, and that once having sign-

808 ed applications for membership in a union, the law compels the adherence of the employees thereto willy-nilly.

16. To the conclusion that the respondent's dealings with its employees, initiated voluntarily by the employees alone and not instigated by the respondent, denied to the union its statutory status, and, therefore, constituted a refusal to bargain collectively, in that said conclusion is contrary to law and to the facts and based upon an erroneous interpretation of the facts.

17. To the finding of fact that the respondent was a
809 party to the employees' proposal to use their union membership as a stock-in-trade for bargaining purposes, because there is no evidence to support such finding.

18. To the finding of fact and conclusion of law that the respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in that it is not supported by the record and is contrary to law.

19. To the finding of fact and conclusion of law that the respondent's activities tend to lead to labor disputes, burdening and obstructing commerce and the free flow of com-
810 merce, because it is contrary to the evidence and the law.

20. To the finding of fact and conclusion of law that the respondent has engaged in and is engaging in unfair labor practices within the meaning of Sections 8 (1) and (5) of the Act, or any other unfair labor practice, because it is contrary to the evidence and the law.

21. To the recommendation that the respondent cease and desist from refusing to bargain collectively with the union as the exclusive representative of all the respondent's

production employees, including packers, order pickers, receiving and shipping clerks, and errand boys, but excluding office, selling and supervisory employees, in that the employees have voluntarily abandoned the union. 811

22. To the recommendation that the respondents cease and desist from engaging in like or related acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, in that the respondent has never engaged in any such acts and in that the language is too broad and indefinite. 812

23. To the recommendation that the respondent upon request bargain collectively with the union as the exclusive representative of its production employees, in that the union does not represent a majority, or in fact, any of said employees.

24. To the recommendation in reference to requiring respondent to post notices that it will cease and desist from interfering with, restraining or coercing its employees, etc., in that respondent denies ever having done so. 813

25. To the recommendation that the respondent notify the Regional Director for the Second Region in writing within twenty days from the date of the receipt of the intermediate report what steps the respondent has taken to comply with said report.

26. To the recommendation that the National Labor Relations Board issue an order requiring the respondent to

814 take the action recommended by the Trial Examiner in his report, in that the respondent is not guilty of any violation of the Act.

27. To each and every conclusion and recommendation, in that it appears from the entire proceedings and record that the employees of their own volition abandoned the union and negotiated wage increases with the respondent and that the respondent did not influence, coerce or interfere with the action of its employees, and consequently is not guilty of any violation of the Act.

815 Dated: New York, June 30th, 1942.

Yours, etc.,

SELIGSBERG, FRIEDMAN & BERLINER,
Attorneys for Respondent,
Medo Photo Supply Corporation,
Office and Post Office Address,
29 Broadway,
Borough of Manhattan,
City of New York.

To:

816 The National Labor Relations Board,
Washington, D. C.

Elinore M. Herrick,
Regional Director for the Second Region,
National Labor Relations Board,
120 Wall Street,
Borough of Manhattan,
New York City.

American Federation of Photo Employees' Union,
Local 21314, A. F. of L.,
245 West 54th Street,
Borough of Manhattan,
New York City.

Notice of Hearing, for Purpose of Oral Argument Before the Board, Dated July 13, 1942.

UNITED STATES OF AMERICA. 817

BEFORE THE
NATIONAL LABOR RELATIONS BOARD.

In the Matter of MEDO PHOTO SUPPLY CORPORATION and AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION, LOCAL 21314, A. F. of L.	Case No. C-2219

818

PLEASE TAKE NOTICE that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449), a hearing will be held before the National Labor Relations Board on Thursday, July 23, 1942, at 2:00 p. m., in Room 326, Shoreham Building Fifteenth and H Streets, N. W., Washington, D. C., for the purpose of oral argument in the above-entitled matter. Argument will be limited to one-half hour for each party, and you are hereby advised that in view of the Board's docket, 819 no request for additional time made at the hearing will be granted.

You may appear and be heard if you so desire.

Should the party requesting oral argument decide not to appear, such party must immediately notify the Board and all other parties. This is necessary in order to avoid serious inconvenience and expense to other parties.

Dated: Washington, D. C., July 13, 1942.

BEATRICE M. STEARN,
BEATRICE M. STERN,
Executive Secretary.

(Seal)

List of Appearances at Oral Argument Held Before the Board, Dated July 23, 1942.

820

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of MEDO PHOTO SUPPLY CORPORATION and AMERICAN FEDERATION OF PHOTO 821 EMPLOYEES UNION, LOCAL 21314, A. F. of L.	Case No. C-2219.

Room 442
Shoreham Building,
Washington, D. C.

A hearing was held in the above matter for the purpose of Oral Argument at the above place July 23, 1942 at 2:00 p. m.

Before:

822 Harry A. Millis, Chairman.
William M. Leiserson, Member.

Appearances:

Marcia Hertzmark, of Counsel to the Board.

For the Company:

William E. Friedman, 29 Broadway, New York, N. Y.

For the Union:

A. Stoltman, 254 W. 54th St., New York, N. Y.

Decision, Findings of Fact, Conclusions of Law and Order Issued by the National Labor Relations Board on September 5, 1942, Together With Affidavit and United States Post Office Receipts. 823

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of MEDO PHOTO SUPPLY CORPORATION and AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION, LOCAL 21314, A. F. of L.	Case No. C-2219. 824

Mr. Sidney Reitman, for the Board.
Seligsberg, Friedman & Berliner, by *Mr. William E. Friedman*, of New York City, for the respondent.
Mr. Al Stoltman, of New York City, for the Union.
Miss Marcia Hertzmark, of counsel to the Board.

DECISION AND ORDER. 825

STATEMENT OF THE CASE.

Upon a charge duly filed by American Federation of Photo Employees Union, Local 21314, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region (New York City), issued its complaint, dated April 14, 1942, against Medo Photo Supply Corporation, New York City, herein called the respondent, alleging that the respondent

826 had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing were duly served upon the respondent and the Union.

Concerning the unfair labor practices, the complaint alleged in substance that the respondent: (1) from on or about May 23, 1941, to the date of the complaint, urged and persuaded its employees to refrain from assisting, or be-
827 coming or remaining members of the Union, and offered the employees wage increases to so persuade them; (2) on or about May 23, 1941, and at all times thereafter, refused upon request, to bargain collectively with the Union as the exclusive representative of the respondent's employees in an appropriate unit, although the Union on that date and at all times thereafter was the properly designated bargaining representative of a majority of the employees in the appropriate unit; and (3) on or about June 6, 1941, negotiated directly with the employees. In its answer, dated April 18, 1942, the respondent denied that it had engaged
828 in the unfair labor practices alleged.

Pursuant to notice, a hearing was held at New York City, on April 30 and May 1, 1942, before William F. Guffey, Jr., the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, the Union by its representative, and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

829 The respondent, at the beginning of the hearing, at the close of the Board' case, and at the close of the respondent's case, moved to dismiss the complaint. The Trial Examiner denied these motions. During the hearing the Trial Examiner, without objection, granted the Board's motion to amend the pleadings to conform to the proof. During the course of the hearing, the Trial Examiner made rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

830 On June 8, 1942, the Trial Examiner filed his intermediate Report, copies of which were served upon the respondent and the Union, finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act. He recommended that the respondent cease and desist therefrom and that it bargain collectively with the Union upon request.

Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. It 831 also requested permission to argue orally before the Board. Pursuant to notice, a hearing for the purpose of oral argument was held on July 23, 1942, before the Board in Washington, D. C. The respondent and the Union were represented and participated in the argument. The Board has considered the exceptions and brief of the respondent and, insofar as the exceptions are inconsistent with the findings of fact, conclusions of law, and order set forth herein, finds them to be without merit.

832 Upon the entire record in the case, the Board makes the following:

Findings of Fact.

I. The business of the respondent.

The respondent, a New York corporation having its principal office and place of business in New York City, is engaged in the purchase, wholesale and retail sale, and distribution of photographic supplies and related equipment such as cameras, film, and papers. During the period from November 1, 1941, to April 30, 1942, a typical period, the 833 respondent purchased more than $900,000 worth of merchandise, approximately 13 per cent of which was shipped from points outside the State of New York to the respondent's place of business in New York City. During the same period the respondent sold approximately $1,000,000 worth of photographic supplies, about 30 per cent of which was sold and shipped by the respondent to customers located outside the State of New York. The respondent admits that it is engaged in commerce within the meaning of the Act.

II. The organization involved.

834 American Federation of Photo Employees Union, Local 21314, is a labor organization, affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

III. The unfair labor practices.

The refusal to bargain collectively; interference, restraint, and coercion.

1. The appropriate unit.

The respondent employs approximately 70 employees, including some "outside" salesmen, all of whom work at or

out of the same place of business in New York City, which includes a retail store and a shipping and receiving department. 835

The complaint alleges that all the production employees including packers, order pickers, receiving and shipping clerks, and errand boys employed at the respondent's New York place of business, but excluding office, selling, and supervisory employees, constitute an appropriate unit.[1] The respondent in its answer denied this allegation and at the hearing contended that all its employees constitute an appropriate unit. 836

The employees in the shipping and receiving department are engaged in the receiving of incoming merchandise and the packing, shipping, and delivery of wholesale and retail orders. They do not come in direct contact with the customers and need no working knowledge of the merchandise they handle. They work in a different section of the building from that in which the other employees work, and generally, do not come in contact with the other employees. The "outside" salesmen and the employees in the retail store, on the other hand, deal directly with the customers and must have a good working knowledge of the merchandise they sell. 837 They are, unlike the employees in the shipping and receiving department, "white collar" employees receiving substantially higher salaries than do the employees of the shipping and receiving department. According to the testimony of the Union's president, which we credit, as did the Trial Examiner, the employees of the

[1] At the hearing the department employing all of the employees included in the unit claimed to be appropriate was referred to as the shipping and receiving department. For the purposes of brevity it will be so referred to herein.

838 shipping and receiving department have indicated a preference for a unit consisting of the shipping and receiving department employees. There is no persuasive reason for ignoring this preference. The Union has limited its organizational activities to those employees which it claims constitute an appropriate unit, and it is the Board's policy to exclude office and supervisory employees and salesmen,[3] who are the employees which the Union here seeks to exclude from the unit. In view of these circumstances, we are of the opinion that a unit comprising the employees of
839 the shipping and receiving department is appropriate.

We find that all production employees of the respondent, including packers, order pickers, receiving and shipping clerks, and errand boys, but excluding office, selling, and supervisory employees, at all times material herein constituted, and that they now constitute, a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, and that said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise
840 effectuates the policies of the Act.

2. Representation by the Union of a majority in the appropriate unit.

On May 23, 1941, there were 26 employees in the respondent's shipping and receiving department, which has been found herein to constitute an appropriate unit. Of this number 18 had, on that date, signed membership applica-

[3] See Fourth Annual Report of National Labor Relations Board, pp. 93-95.

tion cards designating the Union as their collective bargaining representative.[1] 841

We find that on May 23, 1941, and at all material times thereafter, the Union was and now is, the duly designated representative of a majority of the employees in the aforesaid appropriate unit, and that, by virtue of Section 9 (a) of the Act, the Union at all such times was and now is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment. 842

3. The refusal to bargain.

a. Chronology of events.

On May 22, 1941, the Union sent a letter to the respondent requesting it to negotiate a contract covering the employees represented by the Union. Al Stoltman, the Union's president, testified without contradiction, and we find, that on May 23 he informed Irving M. Goodfield, the respondent's vice-president and treasurer, that the Union represented the respondent's employees and requested an opportunity to negotiate an agreement on their behalf. Goodfield replied that A. H. Niemeyer, the respondent's president, was out of town, and that negotiations would have to await his return, which was expected "very shortly, [within] a week or so, or two weeks." On the same day the Union filed with the Board a petition for investigation and certification, claiming as appropriate the unit found above. 843

On June 4, representatives of the Board, the respondent, and the Union conferred at the Board's Regional Office

[1] Of these cards 6 were signed on May 21, 11 on May 22, and 1 on May 23.

844 with respect to the Union's petition for certification. William E. Friedman, one of the respondent's attorneys, questioned the appropriateness of the requested unit and stated that in his opinion only a formal hearing before the Board could solve the problem. When Stoltman asked Friedman if there was any way "to avoid a long delay of going to a formal hearing," Friedman replied that he would arrange a conference for the purpose of considering the unit question, and that if the respondent and the Union could agree as to the appropriate unit, the respondent would consent
845 to the Union's being certified and the parties would "automatically go into the process of bargaining."

On June 5, in accordance with Friedman's commitment the previous day, representatives of the Union and the respondent, including Niemeyer, Goodfield, and Benjamin L. Hoppin, the respondent's general manager, met at the office of the respondent's attorneys. Concerning what occurred at this conference, Stoltman testified that, when he stated that the Union desired to be certified by the Board as the representative of the employees in the above-described unit, Walter M. Seligsberg, one of the respondent's attorneys,
846 asked to see the Union's proposed contract and stated that the respondent "certainly is not going to buy a pig in a poke • • • by consenting to the Union's being certified, and then finding out what they had to bargain for." Seligsberg said that if the Union's proposed contract was "too tough" the respondent would "have to employ all the means we know how, and we will have to fight you through the Board and try to straighten the thing out." When Stoltman questioned the "ethics" of this procedure, Seligsberg answered, "You should understand those things, Stoltman.

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It is not a question of ethics, but it is a question of being practical." Seligsberg then stated that if the proposed contract "constituted a reasonable basis for negotiations," the respondent would consent to the Union's being certified after a check of its cards or an election and that the respondent would then bargain with the Union.

With this understanding Stoltman submitted a proposed contract. After examining it Seligsberg stated, "I believe that the contract is a basis for negotiations, and we can arrive at an agreement." He then asked how many employees had signed union cards and requested the Union 848
to present its cards as proof of its claim. When Stoltman stated that he would submit them for a check by an impartial third person, but would not submit them to the respondent, Seligsberg replied that he had no real doubt concerning the Union's majority status. When Stoltman, nevertheless insisted that the Union be certified in accordance with the agreement of the parties, Seligsberg stated, "Oh, there is no sense in us going through all that. After all, you have got all you wanted, and we are going to negotiate with you * * * Let us sit down and negotiate. That is the primary thing you are after." 849

Seligsberg did not deny the above statements which Stoltman attributed to him, and his testimony concerning this conference, in many respects, corroborates Stoltman's. Seligsberg testified that at the June 5 conference he told Stoltman that the Union's demands constituted "the crux of the matter" and that if the Union had a majority "then maybe we can negotiate an agreement without wasting a lot of time." He also testified that he asked to see the

850 Union's proposed contract for the purpose of determining whether the Union was "demanding such extreme things that we would have to fight from the start." When asked to explain the nature of the "fight" the respondent would wage against the Union, Seligsberg testified: "Well, we would use all the ways that the law gave us to avoid having a deal with an improper unit, or with a unit whose propriety was questionable, or with a unit without proof that the bargainers represented the majority."

851 Seligsberg also testified, however, and the respondent now claims, that the respondent had not, at this conference, agreed to the unit requested by the Union nor accepted its statement that it represented a majority of the employees in that unit. However, when asked at the hearing whether he had discussed these questions at the conference on June 5, Seligsberg replied, "In no detail. I am not sure that I mentioned that to Stoltman. That is what we had in mind. Whether I started to state that we did not think the unit was right or not may or may not be the case."

852 It is thus apparent, and we find, that the respondent was not standing upon its asserted doubts as to the appropriateness of the unit or the Union's majority status but was, on the contrary, preparing to oppose the Union on those grounds in the event its demands were unacceptable. Upon all the evidence, we find, as did the Trial Examiner, that on June 5 the respondent waived its objections, if any, to the unit, conceded that the Union represented the necessary majority, recognized the Union, and agreed to confer again with the Union the following

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Monday, June 9, for the purposes of discussing the Union's demands.

On the morning of June 7, Ray Bruchbacher, 1 of the employees who had signed a union card, went to Hoppin's office and requested an opportunity for a group of employees of the shipping and receiving department to confer with him. Hoppin replied that he would receive the employees that afternoon after working hours. Earlier the same morning Bruchbacher told William Goshgarian, another member of the Union, that "We will go up and see if we can get a raise, if we don't get a raise, we won't bother to do nothing about it," and that the employees, in that event, would remain members of the Union. In the afternoon, 12 of the employees who had signed union cards went to Hoppin's office and, upon Hoppin's inquiry as to why they were there, stated that they and the remaining 6 members of the Union, who were unable to be present, had decided among themselves that they had no desire to belong to the Union if they could obtain wage increases through their own efforts. They then submitted to Hoppin a list of proposed wage increases which were substantially the same as those demanded by the Union, which Goshgarian had helped to formulate, and which were included in the proposed contract submitted to the respondent at the June 5 conference. Hoppin refused to discuss the Union, but stated that he would consider the request for wage increases with President Niemeyer upon the latter's return to the store the following Monday morning, and told the employees to come in again at that time for an answer. On Monday, June 9, Hoppin, Niemeyer, and Goodfield, all of whom were present at the June 5 con-

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856 ference when the Union submitted its proposed contract containing its wage demands, discussed the employees' request for wage increases. Shortly thereafter, a committee of 4 of the employees who had conferred with Hoppin on June 7 called upon Hoppin who informed them that their proposed wage increases had been granted substantially as requested. The committee conveyed Hoppin's message to the other employees who agreed to accept the increases which the respondent was willing to grant. The committee then informed Hoppin that, "the boys down-
857 stairs felt that they did not need the union, and we would rather stay out." The wage increases became effective on June 13 and at the same time the respondent put into effect a general wage increase.

Hoppin testified that about a week before June 7 he had spoken to Niemeyer about general business conditions, which had been exceptionally good the preceding 6 months, and had suggested that "there was something that we ought to do for all the employees." According to Hoppin's testimony, Niemeyer was "quite agreeable." There is no testimony, however, that anything further took place
858 pursuant to this conversation. It appears that the respondent's policy is to grant wage increases at the end of each year rather than at intermediate times. We do not credit Hoppin's testimony that he and Niemeyer had decided prior to June 7 to grant wage increases. We find that the determination to take this action on June 9 was occasioned solely by the employees' offer to withdraw from the Union if the raises were granted.

859

During the afternoon of June 9, representatives of the respondent and the Union, and 4 employees who were present upon the Union's request, conferred in the office of the respondent's attorneys. On the way to the conference the 4 employees manifested an unfriendly attitude toward Stoltman and stated to him that the employees of the shipping and receiving department no longer desired the Union to represent them. The employees had not withdrawn their designation of the Union as their representative prior to June 9. Even then, only 4 of the 18 who had joined the Union informed Stoltman that they 860
no longer desired to be represented by the Union. When Stoltman, at the beginning of the conference, stated that the parties were present for the purposes of negotiating an agreement, Seligsberg replied that he understood that the Union no longer represented a majority of the employees and for that reason the respondent could not at that time negotiate an agreement with the Union, but that he would consent to the holding of an election and that if the Union could thus prove that it represented a majority of the employees, he "would see what could be done." The 4 employees present again stated that they no longer 861
desired to remain members of the Union. The representatives of the Union thereupon withdrew from the conference.

b. Concluding findings

Upon the facts here disclosed, the respondent has refused to bargain collectively with the freely chosen representatives of its employees. On June 5, as we have found, the respondent waived its objections, if any, to the unit and recognized the Union, which had theretofore been

862 freely designated by a majority of the employees therein, as the exclusive representative of all employees in the unit. It is clear that any question concerning representation which had theretofore existed had been resolved and that the respondent was, therefore, obligated to bargain with the Union on behalf of these employees. On June 7, the respondent, notwithstanding its recognition of the Union 2 days earlier, bargained directly with a group of employees concerning wage increases, one of the most fundamental objectives of collective bargaining. Clearly to bar-
863 gain directly with one's employees is not to bargain with their designated exclusive representative.[4] The employees, as found above, had not withdrawn their designation of the Union as their collective bargaining representative and there is no evidence that the Union had ceased to represent the employees. Nor did the action of the employees in approaching the respondent on June 7 constitute an implied revocation of their designation of the Union so as to relieve the respondent of the obligation to deal solely with it. Far from communicating to the respondent an abandonment of the Union, the employees there clearly
864 conditioned such abandonment upon the granting of wage increases. Thus they held themselves out as union members, at the same time offering the respondent, for a price, the power to veto their choice of a representative. The respondent, under these circumstances, was under a duty to refrain from action which would influence the employees to abandon the Union, and its action in granting the increases constituted interference with the self-organiza-

[4] *N. L. R. B. v. Highland Shoe, Inc.*, 119 F. (2d) 218, 221, (C. C. A. 1).

865

tional rights of its employees.[5] "To permit the employer to go behind the chosen bargaining agent and negotiate with the employees individually, or with their committees, in spite of the fact that they had not revoked the agent's authority, would result in nothing but disarrangement of the mechanism for negotiation created by the Act, disparagement of the services of the union, whether good or bad, and acute, if not endless, friction, which it is the avowed purpose of the Act to avoid—or mitigate."[6] In these circumstances, for the respondent to deal directly with its employees was to deny to the Union its statutory 866
status and was, therefore, a refusal to bargain collectively.

The validity of this conclusion is not altered, as the respondent contends, by the mere fact that the direct deal-

[5] Cf. *Matter of Germain Seed and Plant Company* and *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, AFL*, 37 N. L. R. B. 1090, wherein the Board found that an employer's action in granting wage increases when his employees indicated to him that unless he did so they would abandon the organization which the employer had formed and dominated and join an affiliated union, constituted support to the dominated organization and interference with the rights of the employees. See also *N. L. R. B. v. W. A. Jones Foundry and Machine Co.*, 123 F. (2d) 552 (C. C. A. 7), enf'g *Matter of W. A. Jones Foundry and Machine Co., a corporation* and *International Association of Machinists, District No. 8, affiliated with the American Federation of Labor*, 30 N. L. R. B. 809; 867
M. H. Ritzwoller Company v. N. L. R. B., 114 F. (2d) 432 (C. C. A. 7), enf'g as mod. *Matter of M. H. Ritzwoller Company* and *Coopers' International Union of North America, Local No. 28*, 15 N. L. R. B. 15; *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539 (C. C. A. 10), enf'g *Matter of Southern Colorado Power Co.* and *H. H. Stewart and I. L. Watkins, Individuals*, 13 N. L. R. B. 699; see also *Great Southern Trucking Company v. N. L. R. B.*, 127 F. (2d) 180 (C. C. A. 4) enf'g *Matter of Great Southern Trucking Company, Charlotte Branch* and *International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local #71*, 34 N. L. R. B. 1068.

[6] *N. L. R. B. v. Acme Air Appliance Company, Inc.*, 117 F. (2d) 417, 420 (C. C. A. 2). See also *Inland Lime and Stone Company v. N. L. R. B.*, 119 F. (2d) 20, 22 (C. C. A 7)

868 ing emanated from the employees rather than from the respondent. The gist of the respondent's violation of the Act is its direct negotiations with the employees after they had designated, and the respondent had recognized, an exclusive bargaining representative. It is, therefore, immaterial from whence came the impulse to deal directly.[7]

Moreover it is plain that the respondent cannot excuse its refusal to bargain on and after June 9 on the basis of the alleged defections from the Union, even assuming that a number sufficient to destroy the majority had repudiated
869 the Union before June 9. These defections were induced by the respondent's unlawful conduct in dealing directly with the employees. It follows, therefore, that the unfair labor practices of the respondent cannot operate to destroy the exclusive representative status of the Union previously established by the untrammelled will of the majority of the employees in the unit.[8]

In view of the foregoing, and upon the entire record herein, we find that the respondent on June 7, 1941, and at all times thereafter, refused to bargain collectively with the
870 Union as the exclusive representative of its employees in an appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

[7] *Matter of Huch Leather Co.* and *General C.I.O. Union*, 11 N. L. R. B. 394, upon which the respondent relies, is distinguishable from the present case on its facts. In that case the employer had refused to accept the Union's evidence of its majority and had refused to recognize the Union. Moreover, there were no pending negotiations between the employer and the Union; negotiations were awaiting the outcome of the Union's petition for certification.

[8] See *N. L. R. B. v. Bradford Dyeing Association*, 310 U. S. 318.

871

We further find that the respondent, by the above-recited acts, has violated Section 8 (1) of the Act, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

872

V. The remedy

Having found that the respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action in order to effectuate the policies of the Act.

We have found that the respondent refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit. Accordingly we shall order the respondent, upon request, to baragin collectively with the Union.

873

The respondent claims that the Union no longer represents a majority of the employees within the appropriate unit, since some employees have been replaced for various reasons, and contends that "to impose the union upon the present employees as their representative without having

874 given them an opportunity to choose for themselves, is unfair and inequitable." There is no merit in this contention. It was the respondent's act in dealing with its individual employees which occasioned the initial defections from the Union, as we have found above. It cannot now be permitted to evade its duty to bargain with the Union by reason of the fact that new employees, who are not shown to be members of the Union, have since been hired to replace some of those who were members of the Union. We assume that, absent the unfair labor practices of the respondent, the Union
875 would have been able to obtain as members at least some of the new employees and would have maintained its majority status despite the turnover of personnel. In any event, in order to effectuate the policies of the Act, we must restore, as nearly as possible, the *status quo* before the unfair labor practices were committed.[9]

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

Conclusions of Law

1. American Federation of Photo Employees Union,
876 Local 21314, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2 (5) of the Act.

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[9] *Matter of Clarksburg Publishing Co., et al.* and *The Newspaper Guild of Clarksburg No. 118, of the American Newspaper Guild*, 25 N. L. R. B. 456, enf'd, *N. L. R. B. v. Clarksburg Publishing Co.*, 120 F. (2d) 976 (C. C. A. 4); *Matter of George P. Pilling & Son Co.* and *Dental, Surgical & Allied Workers Local Industrial Union No. 119, affiliated with the C.I.O.*, 16 N. L. R. B. 650, enf'd, *N. L. R. B. v. George P. Pilling & Son Co.*, 119 F. (2d) 32 (C. C. A. 3).

877

2. All production employees, including packers, order pickers, receiving and shipping clerks, and errand boys, employed in the respondent's New York place of business, but excluding office, selling, and supervisory employees, constitute a unit appropriate for purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. American Federation of Photo Employees Union, Local 21314, affiliated with the American Federation of Labor, was, on May 23, 1941, and at all material times thereafter has been, the exclusive representative of all the employees in said unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act. 878

4. By refusing to bargain collectively with American Federation of Photo Employees Union, Local 21314, as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is 879 engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the

880 National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Medo Photo Supply Corporation, New York City, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with American Federation og Photo Employees Union, Local 21314, affiliated with the American Federation of Labor, as the exclusive representative of all the production employees in the respondent's New York
881 place of business, including packers, order pickers, receiving and shipping clerks, and errand boys, but excluding office, selling and supervisory employees;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as
882 guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with American Federation of Photo Employees Union, Local 21314, affiliated with the American Federation of Labor, as the exclusive representative of all production employees in the respondent's New York place of business, including packers, order pickers,

883

receiving and shipping clerks, and errand boys, but excluding office, selling and supervisory employees, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places in its New York place of business and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 (a) and (b) of this Order; and (2) 884 that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 5th day of September 1942.

HARRY A. MILLIS
Chairman 885

GERARD D. REILLY
Member

(Seal) NATIONAL LABOR RELATIONS BOARD

886

AFFIDAVIT AS TO SERVICE.

In the Matter of MEDO PHOTO SUPPLY CORPORATION, and AMERICAN FEDERATION OF PHOTO EMPLOYEES UNION, LOCAL 21314, A. F. of L.	Case No. C-2219.

887

District of Columbia, ss:

I, JAMES B. MINOR, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 5th day of September 1942, I mailed postpaid, bearing government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

888

American Federation of Photo
Employees Union, Local 21314
Att: Mr. Al Stoltman
254 W. 54th Street
New York, N. Y. 69618

Medo Photo Supply Corp.
15 W. 47th Street,
New York, N. Y. 69619

889

Seligsberg, Friedman & Berliner,
Att: Mr. William E. Friedman
29 Broadway
New York, N. Y. 69620

JAMES B. MINOR.

Subscribed and sworn to
before me this 5th day
of September, 1942.
Kathryn B. Harrell,
Notary Public, D. C.

890

(Seal) My commission expires March 1, 1947.

(Penalty for Private Use to Avoid Payment of Postage $300)

POST OFFICE DEPARTMENT
Official Business

Postmark of Delivering Office

Registered Article
No. 69618
Insured Parcel
No. .....

Station G
New York, N. Y.
Sep 8 1942
2—P. M.

Return to NATIONAL LABOR RELATIONS BOARD
(Name of Sender)

891

Street and Number,
or Post Office Box,

Washington,
D. C.

892

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1 AMER. FED. OF PHOTO EMPLOYEES
UNION LOCAL 21314 A. F. of L.
(Signature or name of addressee)

2 N. SHIFFMAN
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

893 Date of delivery 8/8—1942
Medo Photo Supply Corp.
C 2219

(Penalty for Private Use to Avoid Payment of Postage $300)

POST OFFICE DEPARTMENT
Official Business

Postmark of Delivering Office

Registered Article
No. 69620
Insured Parcel
894 No. .....

Trinity Station
New York, N. Y.
Sep 8 1942
12:30 P. M.

Return to NATIONAL LABOR RELATIONS BOARD
(Name of Sender)

Street and Number,
or Post Office Box,

Washington,
D. C.

RETURN RECEIPT 895

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1 WILLIAM E. FRIEDMAN
(Signature or name of addressee)

2 M. LANE
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery Sep. 8, 1942
Medo Photo Supply Corp.
C 2219 896

Stipulation.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.

N. L. R. B. Pet.
vs.
MEDO, etc.

Oct. Term 1942. 897

It is hereby stipulated and agreed by and between the attorneys for the above named parties that in printing the record in the above case none of the exhibits introduced at the hearing before the Board shall be printed except as follows:

Stipulation.

898 1. The following portions of Board's Exhibit No. 1
(a) charge
(b) complaint
(c) respondent's answer to complaint.
2. The Board's Exhibits Nos. 3, 4a, 5, 10, 11, 12, 14.
3. That part of Board's Exhibits 4b-R, consisting of the exhibit number, the name of the employee signing the application card the date of the said card, and the salary earned by said employee.
4. The Respondent's Exhibits Nos. 2, 3.

It is further stipulated and agreed that in printing the
899 record, only the portions of the Stenographic Transcript of testimony of the hearing held April 30 and May 1, 1942, before Trial Examiner William Guffey shall be printed.

From		*To*		
Page	*Line*	*Page*	*Line*	*Inclusive*
1	1	1	25	
4	1			
10	12	11	7	
11	15	14	4	to words "Medo employees"
14	14	19	25	
20	20	21	21	
900 22	7	words "Trial Examiner Guffey"		
22	9	26	19	
27	11	27	23	
28	11	30	25	
31	11	33	17	
34	1	34	14	
35	2	57	3	
57	18	64	4	
64	16	73	10	
74	12	87	17	

Stipulation.

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Page	*Line*	*Page*	*Line*	*Inclusive*
88	14	90	2	
92	13	96	3	
97	4	99	21	
100	11	103	14	
104	5	104	12	
104	16	109	18	
110	5	111	25	
112	21	126	25	
127	6	128	6	
128	14	128	25	
129	18	131	5	
131	11	132	4	
132	9	132	24	
133	6	134	17	
134	21	135	3	
135	18	137	23	
138	7	140	23	
141	3	158	14	
162	3	163	12	
166	1	166	8	
166	19	168	3	
168	18	169	19	
170	21	179	10	
179	23	179	25	
180	6	192	2	
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904	*Page*	*Line*	*Page*	*Line Inclusive*
	202)	20)	203)–9	(including words
	203)	17)	203)–25	(objections overruled)
	204	20	206	15
	206	21	214	2
	214	6	215	12
	216	4	216	11
	216	15	217	22
	218	1	218	17
	219	4	219	25
905	220	14	221	1
	221	10	221	11
	223	1	223	19
	224	11		
	224	18	226	21
	230	12	237	9
	237	23	239	11
	239	25	240	12
	241	3	244	25
	245	11	259	4
	259	17	273	3
906	273	24	278	23
	279	5	294	31
	295	1	295	11
	296	20	words "Mr. Reitman"	
	297	8	297	18
	298	3	302A	8
	303	1	309	25
	310	1	311	25
	314	20	320	10

It is further stipulated and agreed that the exhibits and portions of the record not printed shall be deemed part

of the record before the Court and may be considered by the Court and referred to by the parties, and that either party shall have the right to have such portions of the record printed and included in an appendix to their brief or to have such portions of the record printed and included in the printed record in the event that a petition for certiorari is later filed.. 907

Dec. 29, 1942.

Dated at Washington, D. C. this 17th day of November, 1942.

LEONARD HAND, 908
C. J.

Dated at New York, New York this 26th day of Dec. 1942.

ERNEST A. GROSS,
Associate General Counsel.

SELIGSBERG, FRIEDMAN & BERLINER,
Attorneys for Respondent.

So Ordered

....., 909

U. S. C. J.

[fol. 304] UNITED STATES CIRCUIT COURT of APPEALS, for the SECOND CIRCUIT

No. 233—October Term, 1942

(Argued April 5, 1943. Decided April 28, 1943.)

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

MEDO PHOTO SUPPLY CORPORATION, Respondent

Petition of National Labor Relations Board for an Enforcement Order. Petition Granted

Before: L. HAND, SWAN and FRANK, *Circuit Judges*.

Robert B. Watts, Ernest A. Gross, Howard Lichtenstein, Robert Todd McKinlay and Eugene J. Davidson, for petitioner. Seligsberg, Friedman & Berliner, for respondent (William E. Friedman, of counsel).

[fol. 305] FRANK, *Circuit Judge:*

Respondent, in May 1941, had 70 employees; in the latter part of that month, 18 of the 26 employees in its shipping and receiving department signed membership application cards designating a union as their collective bargaining representative. The union thereupon, on May 22, requested respondents to enter into negotiations for a contract and the next day filed a petition with the Board for certification as the exclusive bargaining representative of the employees in that department as an appropriate unit. At a conference on June 4, at the Board's Regional Office, with representatives of respondent, of the union and of the Board present, the union's representative offered to submit proof of the union's majority and to turn the application cards over to a Board representative. The respondent's representative questioned the appropriateness of the unit claimed by the union but told the union's representative that, if they could agree on the unit, re-

spondent would consent to the union's being certified and thereupon the respondent would "automatically go into the process of bargaining." At a meeting on June 5, a representative of respondent said that if the contract proposed by the union constituted a reasonable basis for negotiations, respondent would immediately consent to a certification of the union and begin bargaining, but that meanwhile there would be no purpose in the union's procuring a certification. A conference to negotiate further was set for the succeeding Monday, June 9. Meanwhile, on the intervening Saturday, June 7, 12 of the employees in the shipping and receiving department visited respondent's general manager, and informed him that they and six other members of the union, for whom they were speaking, had no desire to belong to the union if they could obtain a wage-increase. They then presented a proposed wage-scale which was substantially the same as that which the [fol. 306] Union had demanded. In the morning of Monday, June 9, a committee of four of the employees called on the general manager who informed them that the increase had been granted substantially as requested. The committee reported back to the other employees and then advised the general manager that the employees felt that they did not need the union and "would rather stay out." Later in the same day, the negotiating committee informed the union president that they did not wish the union to represent them any longer, and a representative of the respondent then also stated to the union president that respondent could not negotiate a contract with the union as it understood that the union no longer represented the majority, but also stated that respondent would consent to a holding of an election. The employees' committee then affirmed their renunciation of the union.

The Board found that respondent had waived its objections to the unit; had recognized the union as having been freely designated by a majority of the employees as the exclusive representative of all the employees in the unit; and that respondent was therefore obligated to bargain with the union on behalf of those employees. It also found that, in acting upon the offer of the employees conditioned upon abandonment of the union, the respondent had engaged in an unfair labor practice and that it had improperly refused to bargain collectively with the union. The Board rejected

the suggestion that, as some of the employees had been replaced for divers reasons since June 9, 1941, and as the union therefore no longer represented the majority of the employees within the unit, no order should be made requiring respondent to bargain with the union. On the basis of its findings, the Board entered an order requiring respondent, upon request, to bargain collectively with the union as the exclusive representative of the employees in [fol. 307] the unit; to cease and desist from engaging in any like or related acts or conduct; and to post proper notices. The matter is here on petition of the Board to enforce its order.

1. There is substantial evidence to sustain the Board's finding that respondent had recognized the union as the representative of the employees in the department as a proper bargaining unit.

2. There can be no doubt, and respondent in effect concedes, that if it had, of its own accord, made an offer to raise wages on condition of abandonment of the union, it would have been guilty of an unfair labor practice. The question here arises in a case where it has not been proved that the employer initiated the conditional offer. It is unnecessary for us to consider whether, when employees have once selected a bargaining representative, and especially when there has been no certification by the Board or an election, a majority of the employees may then, by informal action, repudiate that representative and bargain directly with the employer. Nor need we consider whether, as an invariable rule, it is an unfair labor practice for an employer to accept an offer made by a majority of the employees to repudiate a representative theretofore selected on condition that the employer will increase wages. It is enough to hold, and we do hold, that it was within the power of the Board to find that, in this particular case, the acceptance of such an offer was an unfair labor practice. In so deciding, we have in mind the doctrine, often stated by the Supreme Court in varying terms, that administrative agencies, because they have been designated by Congress as specialists in a particular field advised by experts, are, within a very wide area, in a better position than a reviewing court to determine the appropriate applications

of the statutes which they are directed to administer.[1] We [fol. 308] have in mind, too, that the Board, in a particular case, can appropriately take into account the fact that to permit an employer to accept such a conditional offer might render it possible for him to create the appearance of having received such an offer, seemingly made spontaneously by a majority of the employees, when in fact the employer secretly played a part in inducing the offer, for proof of such activity on the part of the employer might be highly difficult to obtain. Many legal rules (both statutory and judg-made) rest upon a recognition of the difficulty of proof of certain kinds of conduct; the rules as to proof in cases of dealings by a trustee with his cestui, a guardian with his ward, and the like, are illustrative; and, under the Act, the position of an employer, in his dealings with his employees, has been treated as somewhat of that character because of the peculiar influence he can exert through the employees' fear of "incurring" his "displeasure."[2]

3. That the union may have lost its majority since the employer refused to bargain does not authorize us to direct a new election; that was a matter for the Board to determine, and it has done so. *N. L. R. B.* v. *P. Lorillard Co.*, 314 U. S. 512, 513.

The petition of the Board is granted.

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[1] *Gray* v. *Powell*, 314 U. S. 402, 413; *Alton R. Co.* v. *U. S.*, 315 U. S. 15; *I. A. of M.* v. *N. L. R. B.*, 311 U. S. 72, 82; *S. E. C.* v. *Chenery Corp.*, U. S. (February 1, 1943); *Perkins* v. *Endicott Johnson*, 128 F. (2d) 208, 220-233 and note 60 (C. C. A. 2), aff'd U. S. (January 11, 1943); *Morgan Stanley & Co., Inc.*, v. *S. E. C.*, 126 F. (2d) 325, 332-333; *cf. N. L. R. B.* v. *Moench Tanning Co.*, 121 F. (2d) 951, 953, (C. C. A. 2); *N. L. R. B.* v. *Link Belt Co.*, 311 U. S. 584, 597; *Sperry Gyroscope Co.* v. *N. L. R. B.*, 129 F. (2d) 922, 925; *S. E. C.* v. *Associated Gas & Elec. Co.*, 99 F. (2d) 795, 798 (C. C. A. 2).

[2] *I. A. of M.* v. *N. L. R. B.*, 311 U. S. 72, 78; cf. *N. L. R. B.* v. *Link-Belt Co.*, 311 U. S. 584, 588; *N. L. R. B.* v. *Federbush*, 121 F. (2d) 954, 956 (C. C. A. 2); *N. L. R. B.* v. *Moench Tanning Co. supra.*

[fol. 309] L. HAND, *Circuit Judge* (concurring):

This case comes before us stripped of any intimation of employer control save for the acceptance of the proposal of what I shall assume to have been a majority of the "unit," acting as such, to abandon the union if the employer would raise the wages of the "unit" as a whole. As I understand it, my brothers think that the Board was justified in holding this to be an "unfair labor practice," without passing upon the question whether such an acceptance is ipso facto an unfair practice, even though the employer has had no hand, directly or indirectly, in the proposal. They think that they need not pass upon that question, because in such situations it is practically impossible to be sure that the employer has not in fact been the real promoter of the proposal. Rather than allow undetectible instances to escape in which he has been, the Board may condemn all such agreements, from whomever they may appear to emanate. I will not say that, if the Board has so found, I should not have felt bound to yield to its more intimate acquaintance with the subject matter; certainly it is better placed than we to know how likely it is that in such cases more is meant than meets the eye. But it did not rest its order on such a finding; it held that the employer's acceptance was an "unfair labor practice" as such, quite as much as his proposal would have been, and it seems to me we cannot avoid passing upon that.

If the right of collective bargaining were given only in the interest of the "appropriate unit" concerned, and had no larger public purpose, I should find it very hard to assent to the Board's position. Although § 159(a) does indeed say that "representatives, designated or selected • • • by the majority • • • shall be the exclusive representatives of all the employees • • • for the purposes of collective bargaining," it would be strong doctrine to hold that in the case of a small group like this, the majority could not be its own representative, for they are certainly the [fol. 310] eventual source of authority to act for the "unit." Moreover, there can be no warrant for saying that the selection of a representative gives him personally any interest which the law need, or indeed should, recognize; his authority is purely derivative and the majority may cancel it as soon as they choose, and resume their power as principal; at least until the Board, as a measure of ad-

ministrative convenience, sees fit to regulate such substitutions. If the majority have that power, and if they may use it solely in the interest of the "unit," it is hard to find anything to prevent them from agreeing not to bargain through any representative, or not to bargain collectively at all. Any such bargain they might make would by hypothesis be a collective bargain, and would therefore bind the minority; the surrender of the "unit's" right to bargain collectively would be as valid a term of that particular collective bargain as any other term of that, or any other, collective bargain.

Yet scarcely anyone would assent to such a doctrine pressed to its conclusion; for the right of collective bargaining was created, not alone in the interest of those employees who on a given occasion may avail themselves of it, but to realize those more pervasive purposes which the preamble of the statute discloses (§ 151, Title 29, U. S. Code). *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 267-269; *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 362-364; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 193-195. Not even by the unanimous consent of the "unit" could it permanently surrender its right of collective bargaining: that was created in the interest of industrial peace, and its grant presupposed that it should not be surrendered. Nor could it surrender temporarily that which it could not surrender permanently.

The majority's proposal in the case at bar seems to me to have been in effect a temporary surrender. True, they [fol. 311] did not expressly agree not to bargain collectively for any specific or uncertain period; and indeed it would not inevitably follow, because they proposed to abandon the union just formed, that they proposed not to bargain collectively at all. Moreover, I agree that the Board did not base its order upon such a finding, but upon the fact that the majority could not lawfully deal with the employer while they had an elected representative outstanding. Nevertheless, the Board did find that the majority proposed in consideration of a rise in the "unit's" wages to abandon the only union in existence; and, since the plant was otherwise completely "unorganized," it necessarily followed that there would remain no means of collective bargaining, except as the majority continued to act as a bargaining au-

thority. I can find nothing to suggest that the majority meant to do so, the natural inference from what they did was that the relations between the "unit" and the employer were to remain what they had been: that is, conducted without any authority representing the "unit." That seems to me to be in effect the surrender of collective bargaining, at least for the time being. How long that might be did not appear; but it would have been a breach of faith with the employer for the majority to turn about the next day and organize even an unaffiliated union; for the issue had not been the particular union already formed, but any union at all. While therefore I am not prepared to accept the Board's reasoning, as I understand it, that it was an "unfair labor practice" for the respondent to bargain directly with the majority after it had appointed a representative, I do think that it was an unfair practice so to bargain when the majority's revocation of the union's authority was made conditional upon the closing of a contract in which the majority agreed to abandon collective bargaining even for an unspecified time.

[fol. 312] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT—October Term, 1942

No. 233

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

MEDO PHOTO SUPPLY CORPORATION, Respondent

NOTICE

To: William E. Friedman, Esquire, Messrs. Seligsberg, Friedman & Berliner, 29 Broadway, New York City

Please Take Notice that the National Labor Relations Board is today forwarding to the Clerk of the United States Circuit Court of Appeals for the Second Circuit its proposed decree, a copy of which is annexed hereto and made a part hereof.

(S.) Ernest A. Gross, Associate General Counsel, National Labor Relations Board.

[fol. 313] ORDER OF ENFORCEMENT IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT—October Term, 1942

No. 233

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

MEDO PHOTO SUPPLY CORPORATION, Respondent

DECREE

The National Labor Relations Board having issued an order against Medo Photo Supply Corporation on September 5, 1942; the Board having petitioned this Court for the enforcement of said order; this Court having considered the same, and having on April 28, 1943, issued its decision enforcing said order of the Board, in conformity therewith,

It is Hereby Ordered, Adjudged and Decreed that Medo Photo Supply Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with American Federation of Photo Employees Union, Local 21314, affiliated with the American Federation of Labor, as the exclusive representative of all the production employees in the respondent's New York place of business, including packers, order pickers, receiving and shipping clerks, and errand boys, but excluding office, selling and supervisory employees;

[fol. 314] (b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with American Federation of Photo Employees Union, Local 21314, affili-

ated with the American Federation of Labor, as the exclusive representative of all production employees in the respondent's New York place of business, including packers, order pickers, receiving and shipping clerks, and errand boys, but excluding office, selling and supervisory employees, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places in its New York place of business and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Decree; and (2) that the respondent will take them affirmative action set forth in paragraph 2 (a) of this Decree;

(c) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Decree what steps the respondent has taken to comply herewith.

Learned Hand, Thomas W. Swan, Jerome N. Frank, Judges United States Circuit Court of Appeals for the Second Circuit.

Dated: May 21, 1943.

[Endorsed:] Nat. Labor Board v. Medo Corp. Decree, United States Circuit Court of Appeals, Second Circuit—Filed May 21, 1943, D. E. Roberts, Clerk.

[fol. 315] Clerk's Certificate to foregoing transcript omitted in printing.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

MEDO PHOTO SUPPLY CORPORATION, Respondent

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372; 29 U. S. C. § 151 *et seq.*), respectfully petitions this Court for the enforcement of its order against respondent, Medo Photo Supply Corporation, New York City, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Medo Photo Supply Corporation and American Federation of Photo Employees Union, Local 21314, A. F. of L., Case No. C-2219."

In support of this petition, the Board respectfully shows:

(1) Respondent is a New York corporation, engaged in business in the State of New York, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, a complaint and notice of hearing, respondent's answer to complaint, hearing for purpose of taking testimony and receiving other evidence, Intermediate Report, order transferring case to the Board, respondent's exceptions to Intermediate Report, oral argument before the Board, the Board, on September 5, 1942, duly stated its findings of fact, conclusions of law, and issued an order directed to the respondent, its officers, agents, successors, and assigns. The aforesaid order provides as follows:

Order

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of

the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Medo Photo Supply Corporation, New York City, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with American Federation of Photo Employees Union, Local 21314, affiliated with the American Federation of Labor, as the exclusive representative of all the production employees in the respondent's New York place of business, including packers, order pickers, receiving and shipping clerks, and errand boys, but excluding office, selling, and supervisory employees;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with American Federation of Photo Employees Union, Local 21314, affiliated with the American Federation of Labor, as the exclusive representative of all production employees in the respondent's New York place of business, including packers, order pickers, receiving and shipping clerks, and errand boys, but excluding office, selling, and supervisory employees, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places in its New York place of business and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 (a) and (b) of this Order; and (2) that the respondent will

take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(3) On September 5, 1942, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. Seligsberg, Friedman & Berliner, respondent's attorneys in New York, New York.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent, its officers, agents, successors, and assigns to comply therewith.

National Labor Relations Board, By [s] Ernest A. Gross, Ernest A. Gross, Associate General Counsel.

Dated at Washington, D. C., this 17th day of November 1942.

DISTRICT OF COLUMBIA, ss:

Ernest A. Gross, being first duly sworn, states that he is associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made

therein are true to the best of his knowledge, information, and belief.

[s] Ernest A. Gross, *Associate General Counsel.*

Subscribed and sworn to before me this 17th day of November 1942.

[s] Joseph W. Kulkis, Notary Public, District of Columbia. (Seal.) My Commission expires April 15, 1947.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Same Title]

ANSWER TO PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Second Circuit:

The respondent Medo Photo Supply Corporation, in answer to the petition for enforcement of an order of National Labor Relations Board filed in the above entitled proceeding, respectfully alleges:

(1) Respondent denies each and every allegation contained in paragraph (1) of the petition except that respondent admits that it is a New York corporation engaged in business in the State of New York within this judicial circuit.

(2) With respect to the order of the National Labor Relations Board set forth in paragraph (2) of the petition respondent alleges:

(a) The application and designation cards of the Union signed by only 18 of the respondent's 70 employees conferred no right upon the Union to represent the said employees for an indeterminate period of time, and the said employees could revoke these designations at any time.

(b) On June 7, 1941, the employees, of their own volition, abandoned the Union and negotiated wage increases with the respondent.

(c) The respondent did not influence, coerce or interfere with the aforesaid action of its employees.

(d) Since June 7, 1941, the Union has not represented any of the respondent's employees.

(e) The National Labor Relations Board has been guilty of laches in that it delayed serving and filing a complaint for ten months after the Union's charges were filed.

(f) Since the filing of the Union's charges almost two years has expired, and in this intervening period all but one of the said 18 employees who signed applications for membership in the Union have left the respondent's employ of their own accord.

(g) The present employees of the respondent have never designated nor selected the Union to be their collective bargaining agency.

(h) The respondent's negotiation of wage increases with its employees at their request, and after they, of their own volition, had decided that they no longer wished the Union to be their representative and preferred to deal directly with the respondent, does not constitute a violation of the National Labor Relations Act.

FOR A COMPLETE DEFENSE

(3) Respondent alleges that it would be arbitrary and unfair and not in keeping with either the letter or the spirit of the National Labor Relations Act to require the respondent and its employees to conduct their negotiations through a Union which does not represent any of the employees.

Wherefore, the respondent prays this Honorable Court that the order of the National Labor Relations Board be vacated and set aside upon the ground that the order is not based upon substantial evidence and is contrary to law; or, in the alternative, that this Court direct that an election be held by the National Labor Relations Board to give the present employees of the respondent an opportunity to select their own collective bargaining agency,

and not to have imposed upon them a Union with whom they have had no association whatsoever.

Seligsberg, Friedman & Berliner, By William E. Friedman, Attorneys for Respondent, Office and P. O. Address, 29 Broadway, Borough of Manhattan, City of New York.

(Verified by Alfred H. Niemeyer, President of Medo Photo Supply Corporation, March 3, 1943.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted..

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

IN THE

Supreme Court of the United States

October Term, 1943

No. 265

NATIONAL LABOR RELATIONS BOARD

v.

MEDO PHOTO SUPPLY CORPORATION,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

WALTER N. SELIGSBERG,
Attorney for Petitioner.

WILLIAM E. FRIEDMAN,
of Counsel.

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IN THE

Supreme Court of the United States

October Term, 1943

No. .....

NATIONAL LABOR RELATIONS BOARD

v.

MEDO PHOTO SUPPLY CORPORATION,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Your petitioner, Medo Photo Supply Corporation, respectfully prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Second Circuit, entered on May 21, 1943 (R. 311, 312) enforcing an order of the National Labor Relations Board (herein called the Board) issued against your petitioner (R. 293-295).

Opinions Below

The opinion and concurring opinion of the court below (R. 304-310) are reported in 135 F. (2d) 279. The decision, findings of fact, conclusions of law and order of the Board (R. 275-295) are reported in 43 N. L. R. B. 989.

Jurisdiction

The decree of the court below (R. 311-312) was entered on May 21, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Sections 10 (e) and (f) of the National Labor Relations Act (herein called the Act).

Questions Presented

1. Has an employer been guilty of an unfair labor practice under Sec. 8 (1) of the Act viz: been guilty of interfering, restraining or coercing employees in the exercise of their rights, where, after preliminary negotiations with a Union had been opened, the employees of their own accord and without suggestion from the employer stated that they were dissatisfied with the Union and requested the employer to deal with them directly, and the employer did so, bargained directly with the employees and made a labor agreement with them?

2. Has an employer been guilty of an unfair labor practice under Sec. 8 (5) of the Act viz: refused to bargain collectively with the representatives of his employees, where, after preliminary negotiations with the Union had been opened, the employees of their own accord and with-

out suggestion from the employer stated that they were dissatisfied with the Union and requested the employer to deal with them directly, and the employer did so, bargained directly with the employees and made a labor agreement with them?

3. Is an employer guilty of unfair labor practices where, after a group of his employees had designated a Union as their exclusive bargaining agent and bargaining was about to start, the employees of their own accord and without suggestion or interference from their employer repudiated the Union and requested the employer to bargain with them directly, and the employer did so, and entered into a labor agreement with the employees directly and not through the medium of the previously designated and repudiated Union?

Statute Involved

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. A. Sec. 151 *et seq.*) are set forth in the Appendix, *infra*, p. 13.

Statement

The petitioner is in the wholesale and retail photographic supply business, employing approximately 70 employees (R. 181, 197, 226, 243-244). Between May 21, and 23, 1941, eighteen of the twenty-six employees in the petitioner's shipping and receiving department signed membership application cards designating the American Federation of Photo Employees Union, Local 21314, affiliated

with the American Federation of Labor (herein called the Union) as their collective bargaining representative (R. 11, 14, 228-229). On May 22, 1941, the Union wrote petitioner requesting a meeting to negotiate a contract (R. 16, 230), and on the same day filed a petition with the Board for certification as the exclusive bargaining representative of the employees in the petitioner's shipping and receiving department as an appropriate unit (R. 53).

On June 4, 1941, a conference with respect to the Union's petition was held at the Board's Regional Office with representatives of the Union, the petitioner and the Board (R. 20). The petitioner questioned the appropriateness of the unit, maintaining that all its employees constituted a proper unit for collective bargaining and requested a hearing to determine the appropriateness of the unit claimed by the Union (R. 38). Notwithstanding the fact that the Union had petitioned for certification, it was reluctant to proceed with such a hearing, and at its suggestion a meeting was thereupon arranged between the Union and the petitioner for the following day to discuss the matter further (R. 21-22).

At the second conference on June 5th, three questions were discussed; the appropriateness of the unit, the Union's claim of majority representation and the Union's demands (R. 46, 160). A copy of the proposed contract was submitted by the Union, and it was agreed that if the Union could prove its majority representation, and if the unit claimed by the Union was proper, the petitioner would enter into a contract for collective bargaining (R. 65). The procedure was informal, as Stoltman, the Union's president, and petitioner's counsel had had previous dealings and arms length procedure was waived by tacit consent

(R. 160). A further conference was arranged for June 9th, to dispose of these questions (R. 26).

On Saturday, June 7th, Bruchbacher, one of the petitioner's employees who had signed an application card of the Union, discussed with his fellow employees the advisability of dropping the Union and of themselves approaching the petitioner for wage increases (R. 113). Bruchbacher testified that he did so of his own volition and at his mother's request, after a family discussion at home about the Union, in which his mother said: "There seems to be contentment there now, and it (the Union) would start a lot of trouble" (R. 114). All the eighteen employees who had signed the Union application cards, were lukewarm about the Union, and each said that he had signed the application card because he thought "most of the other fellows want it" (R. 113). When the employees found out that none of them really desired the Union for himself, they requested Bruchbacher to see Hoppin, petitioner's manager, and arrange a meeting (R. 113-114). These discussions were held without the knowledge of the petitioner (R. 114, 176, 180).

After working hours on the same day, twelve of the said eighteen employees went to Hoppin and informed him that they, of their own volition, had decided that they no longer wished the Union to represent them, and that they were interested only in securing wage increases, as the working conditions were excellent and they were happy with their jobs (R. 79, 85, 95, 115). Hoppin was not informed of the reasons for their decision, because he would not discuss the Union with them (R. 130, 177). What the employees had in mind is shown by their testimony. Goshgorian, one of the said eighteen employees, testified that

when he together with his fellow employees went to see Hoppin, he did not want the Union (R. 78, 80). Bruchbacher also testified that he told Hoppin at the meeting "that the fellows did not want the Union; that all they wanted was the raises, and that we had come up to ask for the raises" (R. 130). Seminara, another of the employees, testified that he heard stories about the Union, that he "didn't like so much", and that he "had a pretty definite idea what I was going to do before I went up there. It was not only the raise which decided it" (R. 108, 138).

On June 9th, the petitioner granted the request of its employees (R. 180), and while the wage increases did not in all respects meet the raises requested, the employees were satisfied (R. 179).

On the same afternoon the conference, which had been adjourned on June 5th, was held as scheduled in the offices of the petitioner's attorneys (R. 161). En route to the conference, the four employees, comprising the negotiating committee, informed the Union's president that they and their fellow employees no longer wished the Union to represent them (R. 124, 125). The president tried to induce the employees to remain in the Union, but they refused (R. 117). At the conference, the employees repeated their revocation of the Union's authority to represent them, and stated that they and all the other employees in the shipping and receiving department had come to this decision of their own volition and without any interference, suggestion or instigation by the petitioner (R. 62, 89, 94, 118, 142). The Union's representatives thereupon threatened the petitioner with strikes and boycotts and left the meeting (R. 95, 118).

The Union never called a meeting of the petitioner's employees thereafter, and when the Union's president attempted to communicate with the employees individually they refused to talk to him (R. 59). Thereupon, the Union filed the charge of unfair labor practice on about June 17, 1941 (R. 218-219). The Board did not issue a complaint on this charge until April 14, 1942 (R. 220-223).

During this intervening period a number of the employees left the petitioner's employ of their own accord to join the army, so that presently out of the said eighteen employees only one is still in the petitioner's employ (R. VII, 193, 194). Aside from this one employee, who rejected the Union in June, 1941, the Union has had no contact whatsoever with any of the petitioner's present employees (R. 59).

Reasons for Granting the Writ

1. The decree of the court below (R. 311-312), enforcing the order of the Board (R. 293-295), which holds that the petitioner by acceding to its employees' voluntary request for a wage increase, has violated Sections 8 (1) and 8 (5) of the Act, and directs the petitioner to bargain collectively with the Union as the exclusive representative of all the production employees, despite their abandonment of the Union, involves important questions of Federal law which have not been, but should be, settled by this Court. There do not appear to be any decided cases in point. No cases are cited by the court below on this principal issue (R. 304-310), and the numerous cases relied upon by the Board in its brief to the court below, without exception, involve situations of proved employer initiation and con-

trol. In the instant case the proposal for a wage increase and the rejection of the Union emanated from the employees alone, without any suggestion from the petitioner (R. 289, 290).

2. While the Board and both the majority and minority of the court below have reached the same conclusion, there is such a disparity in their views that the problem cannot properly be considered to have been settled. A resolving of these conflicting opinions is necessary to establish certainty in the administration of the Act, and to prevent confusion in employer-employee relations. This statute is one of our vital laws affecting the relationship and conduct of the great majority of employers and employees in the country, and it is important for them to know with some degree of definiteness to what extent they are permitted to deal with one another without the intervention of a union.

a. The Board based its determination upon its finding that the employees conditioned their abandonment of the Union upon the granting of wage increases (R. 288). The Board cannot contend that the petitioner suggested, influenced or coerced its employees in their decision to negotiate directly for wage increases. The record and decision of the Board shows beyond doubt that the employees acted of their own accord and volition (R. 285). At the close of the hearing before the Trial Examiner, the Board's attorney, in his summation, negated any suggestion of employer-control in the following words:

> "I don't say that this company is a malicious company. I think this is a close question • • • I do not think that the violation is malicious and of

the vicious type, which we have seen in some cases, but I feel there has been a violation" (R. 209).

b. Nevertheless, the gist of Judge Frank's opinion is that while in this case it has not been proved that the petitioner initiated the offer, proof of such activity is so difficult to adduce, that it may be assumed and form the basis for a determination of guilt (R. 307). There is no legal rule that warrants an assumption of a fact on which to predicate a decision, when the contrary has been proved and found. It is respectfully submitted that Judge Frank went too far in reading into the record of this case a finding of any employer-control, in the face of the undisputed evidence to the contrary, and then predicating his decision upon such finding.

Judge Frank does not hold that employees, who have selected a bargaining representative and especially when there has been no certification by the Board or an election, may not then, by an informal action, repudiate that representative and bargain directly with the employer (R. 306). Nor does he hold that it is invariably an unfair labor practice for a employer to accept an offer made by the employees to repudiate a representative theretofore selected on condition that the employer will increase wages (R. 306). In this respect Judge Frank differs from the Board which predicated its decision upon the fact that the employees' offer to repudiate the Union was conditioned upon a wage increase (R. 288). Yet, Judge Frank found the petitioner guilty of an unfair labor practice. The conclusion is irresistible that Judge Frank based his decision upon his finding of employer-control, which is contrary to the evidence and finding of the Board. The petitioner re-

spectfully submits that this is no judicial basis for a decision.

c. Judge Learned Hand refused to follow the majority of the court below on this point, because the Board did not rest its order on the finding of employer-control. Judge Hand disagrees with both the majority opinion and the Board and holds the unfair practice to be the inferential agreement by the employees that upon acceptance of their offer they would abandon collective bargaining, even though for an unspecified time (R. 310). His assumption that the employees' rejection of the Union was an abandonment of their right to collective bargaining is based upon the misconception that only institutionalized forms of collective bargaining are contemplated by the Act. This is not so, as the Act unambiguously defines representatives as "the term 'representatives' includes any individual or labor organization" (*N. L. R. A.*, §2 [4]). The employees in this small unit—26 in all—having effectively negotiated once with the petitioner, there was no promise not to do so again in the future, nor was there any evidence that the petitioner would have refused resumption of negotiations of this character.

Moreover, even if the right to collective bargaining could be said to have been surrendered in the sense that, to use the language of Judge Hand, "it would have been a breach of faith with the employer for the majority to turn about the next day and organize, even an unaffiliated union," what consequences could such a breach of faith possibly have that would be deserving of, or receive, the recognition of the Board? In this, it is the petitioner's respectful opinion that Judge Hand was unrealistic.

These conflicting theories, which if not clarified, will only lead to confusion in the administration of the Act, warrant the granting of this petition.

3. A further compelling reason for granting the petition is that the decision is contrary to the general purposes and public policy of the Act. The declared public policy of the Act is to diminish the causes of labor disputes by encouraging collective bargaining by employees through representatives of their own choosing, whether such representatives be the employees themselves or a labor organization (*N. L. R. A.*, §§1, 2 [4]). This policy is defeated when the employees and employer are compelled to negotiate through a union voluntarily abandoned by the employees. The Act does not compel employees to join a union, nor having once designated a union as their collective bargaining agent, are they foreclosed from thereafter changing their minds and deciding to bargain for themselves. The employees constituting a majority of the bargaining unit, had an unquestioned right to change their representation. No representative has any personal, vested right in his function as such; his right is purely derivative, subject to cancellation by the majority, who may furthermore resume their power as principal to negotiate directly with the employer. In fact, the Board has consistently recognized the right of employees to change their representatives, even in cases where an existing contract with the representatives has not yet expired. (*New England Transportation Co.*, 1 N. L. R. B. 130; *Swayne & Hoyt, Ltd.*, 2 N. L. R. B. 284.)

Where there has been no coercion or interference by the employer with the employees' right of collective bar-

gaining, there can be no finding of an unfair labor practice. Certainly, the Act is not designed to interfere with the employees' initiation of proposals for adjustment of industrial relations.

Since the employees rejected the union in June, 1941, their relationship with the petitioner has been harmonious. The injection of the Union now will only lead to confusion and unrest among the employees, a result which the Act was designed to eliminate.

CONCLUSION

The questions herein presented are of novel impression and of substantial public importance in the administration of the Act. It is, therefore, respectfully submitted that this petition for a writ of certiorari should be granted.

WALTER N. SELIGSBERG,
Attorney for Medo Photo Supply Company,
Petitioner.

WILLIAM E. FRIEDMAN,
of Counsel.

August, 1943.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 499, 29 U. S. C. A. Sec. 151 *et seq.*) are as follows:

"Sec. 1. • • •

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

"Sec. 2. When used in this Act—

(4) The term 'representatives' includes any individual or labor organization."

"Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a)."

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 265

MEDO PHOTO SUPPLY CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR MEDO PHOTO SUPPLY CORPORATION.

WALTER N. SELIGSBERG,
WILLIAM E. FRIEDMAN,
Counsel for Petitioner.

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Opinions Below.

The majority and concurring opinion of the Circuit Court of Appeals for the Second Circuit (R. 304-310) are reported in 135 F. (2d) 279. The findings of fact, conclusions of law and order of the National Labor Relations Board (herein called the Board) (R. 275-295) are reported in 43 N. L. R. B. 989.

Jurisdiction.

The decree of the court below (R. 311-312) was entered on May 21, 1943. The petition for a writ of certiorari was filed August 16, 1943 and granted October 11, 1943 (R. 318).

The jurisdiction of this Court rests upon Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) of the National Labor Relations Act (herein called the Act).

Questions Presented.

1. Has an employer been guilty of an unfair labor practice under Sec. 8(1) of the Act viz: of interfering with, restraining or coercing employees in the exercise of their rights, where, after preliminary negotiations with a Union had been opened, the employees of their own accord and without suggestion from the employer stated that they were dissatisfied with the Union and requested the employer to deal with them directly, and the employer did so, bargained directly with the employees and made a labor agreement with them?

2. Has an employer been guilty of an unfair labor practice under Sec. 8(5) of the Act viz: of refusing to bargain collectively with the representatives of his employees, where, after preliminary negotiations with the Union had been opened, the employees of their own accord and without suggestion from the employer stated that they were dissatisfied with the Union and requested the employer to deal with them directly, and the employer did so, bargained directly with the employees and made a labor agreement with them?

3. Is an employer guilty of unfair labor practices where, after a group of his employees had designated a Union as their exclusive bargaining agent and bargaining was about to start, the employees of their own accord and without suggestion or interference from their employer repudiated the Union and requested the employer to bargain with them directly, and the employer did so, and entered into a labor agreement with the employees directly and

not through the medium of the previously designated and repudiated Union?

Statute Involved.

The pertinent provisions of the Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. A., Sec. 151 et seq.) are set forth in the Appendix, *infra*, pp. 19 and 20.

Statement.

Medo Photo Supply Corporation (herein called Medo) is in the wholesale and retail photographic supply business, employing approximately seventy employees (R. 181, 197, 226, 243-244). Between May 21st and 23rd, 1941, eighteen of the twenty-six employees in Medo's shipping and receiving department signed membership application cards designating the American Federation of Photo Employees Union, Local 21314, affiliated with the American Federation of Labor (herein called the Union) as their collective bargaining representative (R. 11, 14, 228-229). These application cards were not binding for any specified period of time. On May 22nd, 1941, the Union wrote Medo requesting a meeting to negotiate a contract (R. 16, 230), and on the same day filed a petition with the Board for certification as the exclusive bargaining representative of the employees in Medo's shipping and receiving department as an appropriate unit (R. 53).

On June 4, 1941, a conference with respect to the Union's petition was held at the Board's Regional Office with representatives of the Union, Medo and the Board (R. 20). Medo questioned the appropriateness of the unit, maintaining that all its employees constituted a proper unit for collective bargaining and requested a hearing to determine the propriety of the unit claimed by the Union (R. 38). Notwithstanding the fact that the Union had petitioned for certification, it was reluctant to proceed with

such a hearing, and at its suggestion a meeting was thereupon arranged between the Union and Medo for the following day to discuss the matter further (R. 21-22).

On June 5th at the second conference three questions were discussed: the appropriateness of the unit, the Union's claim of majority representation and the Union's demands (R. 46, 160). The proposed contract was submitted by the Union, and it was agreed that if the Union could prove its majority representation, and if the unit claimed by the Union was appropriate, Medo would enter into a contract for collective bargaining (R. 65). The procedure was informal, as the Union's President and Medo's counsel had had previous dealings and arms-length procedure was waived by tacit consent (R. 160). A further conference was arranged for June 9th, to dispose of these questions (R. 26).

On Saturday, June 7th, Bruchbacher, one of Medo's employees who had signed an application card of the Union, discussed with his fellow employees the advisability of dropping the Union and of themselves approaching Medo for wage increases (R. 113). Bruchbacher testified that he did so of his own volition and at his mother's request, after a family discussion at home about the Union, in which his mother said: "There seems to be contentment there now, and it (the Union) would start a lot of trouble." • • •. "Why don't you see the other fellows and see what they think?" (R. 114). None of the eighteen employees who had signed the Union's application cards, evinced any real interest in the Union, and each said that he had signed the application card because he thought "most of the other fellows want it" (R. 113). When the employees found out that none of them really desired the Union for himself, they requested Bruchbacher to see Hoppin, the manager of Medo, and arrange a meeting (R. 113-114). These discussions were held without the knowledge of Medo (R. 114, 176, 180).

After working hours on the same day, twelve of the eighteen employees went to Hoppin and informed him that they, of their own volition, had decided that they no longer wished the Union to represent them, and that they were interested only in securing wage increases, as the working conditions were excellent and they were happy with their jobs (R. 79, 85, 95, 115). Hoppin was not informed of the reasons for their decision, because he refused to discuss the Union with them (R. 130, 177). What the employees had in mind when they went to Hoppin is shown by their testimony. Goshgarian, one of the eighteen employees, testified that when he together with his fellow employees went to see Hoppin, he did not want the Union (R. 78, 80). Bruchbacher also testified that he told Hoppin at the meeting "that the fellows did not want the Union; that all they wanted was the raises, and that we had come up to ask for the raises" (R. 130). Seminara, another of the employees, testified that he had heard stories about the Union, that he "didn't like so much", and that he "had a pretty definite idea what I was going to do before I went up there. It was not only the raise which decided it" (R. 108, 138).

On June 9th, Medo granted the request of its employees (R. 180), and while the wage increases did not in all respects meet the raises requested, the employees were satisfied (R. 179).

On the same afternoon the conference, which had been adjourned on June 5th, was held as scheduled in the offices of Medo's attorneys (R. 161). En route to the conference, the four employees, comprising the negotiating committee, informed the Union's president that they and their fellow employees no longer wished the Union to represent them (R. 124, 125). The president tried to induce the employees to remain in the Union, but they refused (R. 117). At the conference, the employees repeated their revocation of

the Union's authority to represent them, and stated that they and all the other employees in the shipping and receiving department had come to this decision of their own volition and without any interference, suggestion or instigation by Medo (R. 62, 89, 94, 118, 142). The Union's representatives thereupon threatened Medo with strikes and boycotts and left the meeting (R. 95, 118).

The Union never called a meeting of Medo's employees thereafter, and when the Union's president attempted to communicate with the employees individually, they refused to talk to him (R. 59). Thereupon, on about June 17, 1941, the Union filed charges against Medo of engaging in unfair labor practices (R. 218-219). The Board did not issue a complaint on these charges until ten months later, April 14, 1942 (R. 220-223).

During this intervening period a number of the employees left Medo's employ of their own accord to join the Army so that presently out of the eighteen employees only one is still in Medo's employ (R. 193, 194, 317). Aside from this one employee, who rejected the Union in June 1941, the Union has had no contact whatsoever with any of Medo's present employees (R. 59).

Upon the foregoing facts, the Board concluded that Medo had engaged in unfair labor practices within the meaning of Sections 8 (1) and (5) of the Act, and entered its order requiring Medo to cease and desist from refusing to bargain collectively with the Union as the exclusive representative of all the production employees of Medo, and from engaging in any like or related acts or conduct (R. 293-295).

On November 17, 1942 the Board filed its petition for enforcement in the court below (R. 313-316), to which Medo filed an answer (R. 316-318). On April 28, 1943 the court handed down its decision enforcing the Board's order (R. 304-310), and the decree was entered on May 21, 1943 (R.

311-312). Medo filed a petition for a writ of certiorari on August 16, 1943, which was granted on October 11, 1943 (R. 318).

Specifications of Errors to Be Urged.

The Circuit Court of Appeals erred:

1. In holding that Medo's negotiations of wage increases with its employees at their request, and after they of their own volition had decided that they no longer wished the Union to represent them and preferred to deal directly with Medo, constituted a violation of Sections 8 (1) and (5) of the Act.

2. In holding that the employees, having once selected a bargaining representative, though there had been no certification by the Board nor an election, might not then, by informal action repudiate that representative and bargain directly with Medo, their employer.

3. In holding that although there is no intimation of employer control in this case, the possible difficulty of proving such control in some other case justified the Board in finding Medo guilty of an unfair labor practice.

4. In holding that by bargaining directly with Medo, the employees surrendered the right of collective bargaining granted to them under the Act.

Summary of Argument.

1. Medo's negotiations of wage increases with its employees at their request, and after they of their own volition had decided that they no longer wished the Union to represent them and preferred to deal directly with Medo, are not violations of the Act. The Act is designed to afford employees the benefit of free expression in their industrial relations, and is incidentally an aid to unions.

Subjection to a union against the employees' will is as abhorrent to the expressed purpose of the Act as subjection to an employer. The Act does not require employees to join a union, nor does it deny them the privilege of voluntarily changing their minds about union representation. Were it otherwise, employees would be deprived of the freedom of choice guaranteed them by the Act itself.

2. Since the record conclusively establishes that the abandonment of the Union and the request for wage increases emanated solely from the employees without any suggestion, persuasion or intimidation by Medo, there is no justification for predicating a determination of guilt upon the conclusion that because of the difficulty of proving employer control in some other case, it should be implied in the instant case. In so holding, the majority of the court below erred.

3. The determination of the court below that the proposal of the employees constituted a surrender of their right of collective bargaining is based upon the misconception that only institutionalized forms of collective bargaining are contemplated by the Act. The employees' representatives for collective bargaining as defined by the Act, may be the individual employees themselves or any group of employees selected by them, as well as a labor organization. Moreover, the Board would not countenance any claim of relinquishment of the employees' right of collective bargaining as a result of their agreement with Medo.

ARGUMENT.

I.

The employees of Medo had the right to change their minds about the Union and deal directly with their employer, and Medo's acceptance of their proposal is not a violation of the Act in view of the undisputed evidence that Medo did not inspire or even suggest the proposal.

This case comes before this Court stripped of any intimation of employer control over the decision of the employees to bargain directly with their employer (R. 85, 86, 89, 114, 118, 139, 176-180, 290, 306, 308), or of any malicious or wilful action on the part of Medo (R. 209). Medo's offense,—if any it committed,—is to have received the employees, at their request, when they said they did not want or like the Union (R. 176, 177),—to have listened to their proposal that all they wished were wage increases as all other conditions of employment were satisfactory (R. 177, 178),—to have considered their demand for increases (R. 187),—and to have granted the same in part (R. 179, 180). No suggestion, no inspiration, nothing of that sort on the part of Medo has been found by the Board or the Circuit Court of Appeals (R. 289, 290, 306, 308). The Board's attorney in his summation at the close of the hearing before the Trial Examiner characterized Medo's conduct as follows:

> "I don't say that this company is a malicious company. I think this is a close question * * * I do not think that the violation is malicious and of the vicious type, which we have seen in some cases * * *." (R. 209.).

The gist of the Board's finding of an unfair labor practice is Medo's acceptance of its employees' voluntary proposal, and not any intimidation, control or interference

with its employees in their determination to deal directly with Medo rather than through the Union (R. 290). There is no proof or finding of any collusion between Medo and its employees (R. 308). The uncontradicted testimony of the employees as to the manner in which they arrived at their decision negates any inference that it was inspired by Medo (R. 85, 86, 89, 114-118, 139). After Bruchbacher, at the suggestion of his mother, opened the discussion with his fellow employees about the advisability of dropping the Union, they found that each had joined the Union in the belief that the others wished to do so (R. 113, 114). When they learned the contrary to be true, they accepted what the Union organizer had told them as to their rights, and broached their only grievance,—wages,—directly to Medo (R. 113). Yet all the cases thus far cited by the Board in support of its contention involve situations where the employer sought out the employees during bargaining negotiations and offered wage increases, vacations or other favors with the deliberate intent and purpose of undermining the Union. This is not the fact in the instant case, and consequently the rationale of those cases has no application.

This is a case of novel impression in the courts. There do not appear to be any cases in point on the main issue; to wit, whether the employees could of their own free will and accord abandon the Union and bargain directly with Medo, and whether Medo's acceptance of their offer constituted an unfair labor practice. The declared public policy of the Act is to diminish the causes of labor disputes by encouraging collective bargaining by employees through representatives of their own choosing, whether such representatives be the employees themselves or a labor organization (N. L. R. A. §§ 1, 2(4). This policy is defeated when the employees are forced to continue to negotiate through a union which they have voluntarily

rejected. The Act was not designed to foist a union upon employees against their will.

In *N. L. R. B.* v. *Sterling Electric Motors*, 109 Fed. (2d) 194 (C. C. A. 9), the court, in discussing the employees' right to reject the Union, pointed out the dilemma confronting the employees of small businesses in deciding whether or not to join a union, and concluded that they had three alternatives. After pointing out the advantages and disadvantages of two alternatives, which were to join an international union or a so-called "inside union", the court said (p. 202):

> "The third alternative for the small plant seems almost ignored in the titanic struggle for power of nation-wide internationals and associations, though the right to choose it is as worthy of the consideration of courts and legislatures as either of the other two. That is the right not to join or create or assist any labor organization at all, but to deal individually with the employer. What we have described above regarding the result of 'normal relations and innocent communications' between employers and employees properly may lead the latter to choose to remain unorganized. The Supreme Court construes a predecessive statute for the protection of collective bargaining as not prohibiting the employer's 'entering into such contract of employment as it chooses, with its individual employees', Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515, 557, 57 S. Ct. 592, 604, 81 L. Ed. 789, and puts a like construction upon the National Labor Relations Act, National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 45, 57 S. Ct. 615, 81 L. Ed. 893, 108 A. L. R. 1352."
>
> . . . . . .
>
> "Each of these three rights is of equal value and in administering the National Labor Relations Act is entitled to the protection of the Board."

The fact that the employees signed application cards of the Union does not subject them to domination by the Union forever. These cards mention no definite period of time during which the employees are bound to continue the Union as their representative (R. 11, 14, 228, 229). There was no election or certification by the Board (R. 306). Consequently, the employees had the unquestioned right to cancel the Union's authority on June 7th, when they decided to act for themselves as stated by Judge Learned Hand in this case, "Although § 159(a) does indeed say that 'representatives, designated or selected * * * by the majority * * * shall be the exclusive representatives of all the employees * * * for the purposes of collective bargaining,' it would be strong doctrine to hold that in the case of a small group like this, the majority could not be its own representative, for they are certainly the eventual source of authority to act for the 'unit'" (R. 308). Medo did not in the language of § 8(5) of the Act, "refuse to bargain collectively with the representatives of his employees * * *". It went one better, and bargained collectively with the majority of its employees themselves (R. 176-179). Furthermore, there can be no valid claim that the majority of the employees of the unit were not "representatives" of the employees, since § 2(4) of the Act defines representatives as: "The term 'representatives' includes any individual or labor organization".

No representative has any personal vested right in his function as such; his right is purely derivative, subject to cancellation by the majority, who may thereafter resume their power as principal to negotiate directly with the employer. Here again Judge Hand is squarely in accord with Medo's position, in stating in his opinion:

> "Moreover, there can be no warrant for saying that the selection of a representative gives him personally any interest which the law need, or indeed should, recog-

> nize; his authority is purely derivative and the majority may cancel it as soon as they choose, and resume their power as principal;" (R. 308)

and further

> • • • "therefore I am not prepared to accept the board's reasoning, as I understand it, that it was an 'unfair labor practice' for the respondent to bargain directly with the majority after it had appointed a representative," (R. 310)

The Board has consistently recognized the right of employees to change their representatives, even in cases where an existing contract with the representatives has not yet expired (New England Transp. Co., 1 N. L. R. B. 130; Swayne & Hoyt Ltd., 2 N. L. R. B. 284).

The Board's finding of illegal conduct in Medo's acceptance of its employees' conditional offer to repudiate the Union if their demand for wage increases was granted, is a derogation of the freedom of choice of representation granted to employees under the Act. Restriction upon their right to revoke authority once granted by them is surely as unwarranted a restriction upon their right to designate representatives of their own choosing, as is restriction upon their liberty of designation in the first instance. If the purpose of the Act is to be effectuated, freedom in the one respect is to be safeguarded to the same extent as in the other. No formal action or application to the Board was necessary to effectuate the revocation, especially since there had not been any certification by the Board or an election. The employees had the right to impose the condition, and so long as Medo did not instigate or make the advances, it had the right to accede thereto. Certainly the Act is not designed to interfere with the employees' initiation of proposals for adjustment of industrial relations.

A somewhat similar claim of illegal conduct on the part of an employer was made by the Board and rejected by the

Circuit Court of Appeals in *N. L. R. B.* v. *Bradford Machine Tool Co.*, 138 Fed. 2d 246, 249 (C. C. A. 6). There a majority of employees designated a union as their bargaining representative on condition that the union obtain a wage increase within ten days. Upon the complaint of a rival union, the Board decided that the action of the employer in granting the wage increase and signing a contract with the designated union constituted an unfair labor practice, although there was no showing of any collusion between the employer and the designated union or of any discriminatory practice indulged in by the employer against the rival union. The Circuit Court of Appeals overruled the Board, holding that the employees had the right to impose the condition to their authorization to the Union and that "it would have been improper for respondent (the employer) to refuse to enter into a written agreement" with the designated union.

Similarly in the instant case, Medo acted properly in accepting its employees' offer. To reject it, would have been a violation of the spirit of the Act, in that Medo would then have interfered with and dictated to its employees in the free choice of their representative.

The purpose of the Act is to benefit and protect employees in their relations with employers, and to promote industrial peace and harmony, and not to saddle a union upon employees against their will. Ever since the employees consummated their negotiations with Medo, over two and one-half years ago, the parties have worked together harmoniously and without friction. To disturb this satisfactory relationship by now injecting the Union against the express will of the employees would only create discord and defeat the very purpose of the Act.

II.

There is no justification for the assumption by the majority of the court below that Medo played a part in inducing the offer of its employees.

The record and decision of the Board leave no room for any doubt that the employees acted of their own accord and volition and without any interference or control by Medo (R. 85, 86, 89, 113-118, 139, 176-179, 290). The employees' decision to deal directly with Medo represented their untrammelled wish, tainted by no unfair practices of Medo (R. 113-118). There is no secret as to how this decision was reached. After discussing unionization with his parents Bruchbacher followed their advice and took the question up with his mates, and they found that all had signed the Union's application cards because each thought the others desired the Union, and that none of them had any real interest in the Union (R. 113, 114). Yet the majority of the court below held that proof of employer control is so difficult to adduce, that, although the contrary is conclusively shown in this case, it may be assumed and a determination of guilt predicated thereon (R. 307). There is no rule of law that warrants an assumption of a fact on which to base a decision, where the contrary has been proved and found. As stated in *N. L. R. B.* v. *A. S. Abell Co.*, 97 Fed. (2d) 951, at 957 (C. C. A. 4), "There is, however, no justification for the position that spontaneous action on the part of the men is so improbable as to warrant the inference that it was inspired by the management."

That this assumption of a non-existent fact influenced the decision of the majority of the court below is evident from an analysis of their opinion. They did not decide that employees, who have selected a bargaining representative, may not then, by informal action, repudiate that

representative and bargain directly with the employer (R. 306). Nor did they decide that it is invariably an unfair labor practice for an employer to accept an offer made by the employees to repudiate a representative theretofore selected on condition that the employer will increase wages (R. 306). Yet, the majority found Medo guilty of an unfair labor practice for accepting just such an offer (R. 307). Why the majority saw fit to so hold here is not pointed out. The conclusion is irresistible that the decision of the majority is based upon their unwarranted reading into the record of a finding of employer control, in the face of the undisputed evidence and the finding of the Board to the contrary. Judge Hand properly refused to follow the majority on this point (R. 308), and it is respectfully submitted that a finding contrary to the Board's finding, and contrary to the proof, is not a proper basis for a judicial decision. The fact that in some other case, not before this Court, on other facts, the Board might have found otherwise, is no warrant for a decision condemning Medo for acts which it did not perform.

Furthermore, predicating the decision upon this assumption of a non-existent fact completely disregards established legal principles governing the court review of Board orders:

1. It is axiomatic that the burden of proving the charges against Medo is upon the Board,[1] and that all findings must be based upon substantial evidence.[2]

2. It is equally true that there must be an impartial

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[1] *Texarkana Bus Co. Inc.* v. *N. L. R. B.*, 119 Fed. (2d) 480 (C. C. A. 8); *N. L. R. B.* v. *Illinois Tool Works*, 119 Fed. (2d) 356 (C. C. A. 7); *Magnolia Petroleum Co.* v. *N. L. R. B.*, 112 Fed. (2d) 545 (C. C. A. 5); *N. L. R. B.* v. *A. S. Abell Co*, 97 Fed. (2d) 951 (C. C. A. 4).

[2] *N. L. R. B.* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292; *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197.

evaluation of the evidence, and in such process undisputed evidence is not to be disregarded.[3]

The majority's disregard of the uncontradicted proof that Medo had no hand directly or indirectly in the proposal of its employees and of the Board's finding to this effect, warrants a reversal of the decree.

III.

The employees by dealing directly with Medo did not surrender their right of collective bargaining.

The gist of the concurring opinion is that by negotiating with Medo the employees inferentially agreed that upon acceptance of their offer they would abandon collective bargaining, even though for an unspecified time (R. 310). This assumption is based upon the misconception that only institutionalized forms of collective bargaining are contemplated by the Act. This is not so, as the Act unambiguously defines representatives as "the term 'representatives' includes any individual or labor organization" (N. L. R. A., § 2(4)). The employees in this small unit—twenty-six in all—having effectively negotiated once with Medo, there was no promise not to do so again in the future, nor was there any evidence that Medo would or could have refused resumption of negotiations of this character.

Moreover, even if the right to collective bargaining could be said to have been surrendered in the sense that, to use the language of Judge Hand, "it would have been a breach of faith with the employer for the majority to turn about the next day and organize, even an unaffiliated union" (R. 310), what consequences could such a breach of faith

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[3] *N. L. R. B.* v. *Sands Mfg. Co.*, 96 Fed. (2d) 721, 727 (C. C. A. 6) aff'd 306 U. S. 332; *P. & O. S. S. Co.* v. *N. L. R. B.*, 98 Fed. (2d) 411, 415 (C. C. A. 5) cert. den. 305 U. S. 653.

possibly have that would be deserving of, or receive, the recognition of the Board? In this, it is respectfully submitted that Judge Hand was in error.

Conclusion.

It is respectfully submitted that the decree of the court below should be reversed, the Board's order set aside and its complaint dismissed.

Respectfully submitted,

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Attorneys for Medo Photo Supply Corporation.

December 1948.

APPENDIX.

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935 c. 372, 49 Stat. 499, 29 U. S. C. A. Sec. 151, et seq.) are as follows:

"Sec. 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife and unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; (or (d) causing dimunition of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce:

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contact, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business repressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right to employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working

conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, or the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

"Sec. 2. When used in this Act—

(4) The term 'representatives' includes any individual or labor organization."

"Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a)."

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1943

No. 265

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MEDO PHOTO SUPPLY CORPORATION,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD.

REPLY BRIEF FOR MEDO PHOTO SUPPLY CORPORATION.

The arguments in the respondent's brief proceed on the assumption that it is immaterial that the employees decided to negotiate and did negotiate with the petitioner of their own free will and not at the suggestion or instigation of the petitioner (Br. 27).

The respondent takes the position that this premise is "almost too clear for argument" (Br. 27), and in support cites cases in which the employer either discriminated against the employees because of their union affiliation, or engaged in espionage activities, or approached the employees during bargaining negotiations with offers of various inducements to undermine the union (Br. 28, 29).

Not a single case is mentioned adjudging it to be an unfair labor practice for an employer to accept an offer made voluntarily by a majority of the employees to repudiate a representative theretofore selected on condition that the employer increase wages. Research by the petitioner's counsel has revealed only one authority in point, *N. L. R. B.* v. *Bradford Machine Tool Co.*, 138 Fed. (2d) 246 (C. C. A.

6). That case is discussed on page 14 of the petitioner's main brief. The respondent has ignored it completely. In that case the Board found that a course of conduct similar to that in the instant case was a violation of the Act, but the Circuit Court of Appeals overruled the Board, holding that the employee's conduct was not an unfair labor practice.

The respondent does not dispute that the purpose of the Act is to permit employees to make their own decisions as to their bargaining representatives, who may be the employees themselves (N. L. R. A. §2 [4]), in order to lessen industrial strife and establish stable and harmonious industrial relations (Br. 24, 25). That purpose was achieved and that result accomplished in the instant case by the negotiations initiated by the petitioner's employees. Almost three years have passed since the employees approached the petitioner with their proposal and negotiated an agreement satisfactory to them, and since then there has not been a single complaint by any employee. The importance of maintaining this relationship, which has proved to be wholly satisfactory to both employer and employees, cannot be minimized. Yet the respondent chooses to ignore it.

By granting the wage increases the petitioner did not dictate to its employees, as stated by the respondent (Br. 24), but merely acceded to their wishes. The petitioner did not dictate or influence the determination and desire of its employees to deal directly with the petitioner rather than through the Union (R. 85, 86, 89, 114, 118, 139, 176-180, 290, 306, 308). That decision was arrived at by the employees entirely of their own accord for the reasons stated in the petitioner's main brief (Petitioner's Br. 4, 5, 10, 15). The petitioner had no inkling of its employees' dissatisfaction with the Union until the meeting of June 7th, when twelve employees, representing that they spoke for the eighteen who had signed the Union's application cards, informed Manager Hoppin thereof (R. 177-180).

The respondent's statement that only four of the eighteen employees repudiated the Union (Br. 12, fn. 14; 30 fn. 23) is not supported by the record. These four employees, comprising the employees' negotiating committee, informed the Union on June 9th that they and their fellow employees had decided that they no longer wished the Union to represent them (R. 62, 118, 124, 125). That all the employees rejected the Union is borne out by the fact that thereafter all of them refused to have any further dealings with the Union (R. 59). Neither the Board's decision nor the decision of the Circuit Court of Appeals is based upon the unrealistic ground that only four and not all of the employees revoked the Union's representation.

The sole issue in this case is whether the employees had the right to change their minds about the Union and deal directly with their employer, and whether the petitioner was guilty of an unfair labor practice in accepting its employees' proposal, submitted by them freely and voluntarily without any influence, inducement or suggestion by the petitioner.

The ultimate purpose of the Act is effectuated where harmonious labor relations are established through negotiations conducted in a manner freely selected by the employees. The record shows that this procedure was followed in the instant case, and that thereby the salutary purpose of the Act was achieved.

It is, therefore, respectfully submitted that the decree of the court below should be reserved, the Board's order set aside and its complaint dismissed.

Respectfully submitted,

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February, 1944.

BRIEF FOR THE RESPONDENT IN OPPOSITION

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549469—43

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 265

MEDO PHOTO SUPPLY CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The majority and concurring opinions of the court below (R. 304–307, 308–310) are reported in 135 F. (2d) 279. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 275–295) are reported in 43 N. L. R. B. 989.

JURISDICTION

The decree of the court below (R. 311–312) was entered on May 21, 1943. The petition for a writ

of certiorari was filed on August 16, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

The Board found that petitioner, after recognizing the statutory status of the Union[1] on June 5 as the exclusive bargaining agent of its employees in an appropriate unit, and pending the scheduled opening of collective bargaining on June 9, engaged in direct dealings with employees in the said unit and granted them a wage increase in acceptance of their offer to repudiate the Union, conditioned upon the granting of such increase. It found further that petitioner thereafter refused to bargain with the Union on the ground that the Union had consequently lost its representative status. The sole question presented is whether, upon these findings, the Board properly concluded that petitioner had violated Section 8 (1) and (5) of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 11–13.

[1] Photo Employees Union, Local 21314, affiliated with the American Federation of Labor.

STATEMENT

Upon the usual proceedings, the Board issued its findings of fact, conclusions of law, and order (R. 275–295). The facts, as found by the Board and shown by the evidence, may be summarized as follows:[2]

On June 4 and 5, 1941, about two weeks after eighteen of the twenty-six employees in petitioner's shipping and receiving department had designated the Union as their bargaining agent, conferences were held by representatives of the Union, of the National Labor Relations Board, and of petitioner, in which petitioner at first questioned the appropriateness of the shipping and receiving department as a bargaining unit, but finally waived a formal determination by the Board and agreed to negotiate with the Union for the unit claimed without further proceedings. A proposed contract was submitted by the Union, and it was agreed that petitioner would meet with the Union on June 9 to begin collective bargaining. (R. 280–285; 20–26, 228–229.)

On June 7, it was decided by some of the Union members that they would ask for a wage increase directly instead of through the Union, but that they would continue their Union membership if their request were refused (R. 285; 109, 122–123).

[2] In the following statement, the references preceding the semicolons are to the Board's findings; the succeeding references are to the supporting evidence.

That afternoon, a group of twelve Union employees visited Manager Hoppin, submitted a proposed wage scale substantially the same as that already submitted by the Union, and stated that they and the six other Union members had no desire to belong to the Union if they could obtain a wage increase directly (R. 285; 231–232, 83–85, 106, 115–116, 78). On June 9, their proposal was accepted with slight modifications, and, upon being so advised, they informed Mr. Hoppin the same morning "that they did not need the Union, and * * * would rather stay out" (R. 285–286; 98–99, 101–102).

Later in the day, en route to the scheduled collective bargaining conference, the four members of the bargaining committee told the Union agent that the employees no longer wanted the Union to represent them (R. 287; 30–31, 124). At the conference, petitioner announced that it could not bargain with the Union because it no longer represented a majority, but that if the Union could prove otherwise by an election, it would see what could be done; the four employees present again stated that they no longer wished to remain members of the Union, and the meeting ended (R. 287; 31–32, 161, 174).

Upon the foregoing facts, the Board concluded that petitioner had engaged in unfair labor practices which the meaning of Section 8 (1) and (5) of the Act and entered its order requiring peti-

tioner to cease and desist from its violations of the Act, to bargain collectively with the Union, and to post appropriate notices (R. 293–295).

On November 17, 1942, the Board filed its petition for enforcement in the court below and on April 28, 1943, the court handed down its opinion enforcing the Board's order (R. 304–307). Judge Learned Hand concurred in a separate opinion (R. 308–310). A decree enforcing the Board's order was accordingly entered on May 21 (R. 311–312).

ARGUMENT

1. Upon the evidence summarized above, the court sustained the Board's findings of fact, (a) that on June 5, petitioner recognized the Union's statutory status as the exclusive representative for purposes of collective bargaining of the employees in an appropriate unit (R. 287–288, 306), and (b) that, between then and June 9, petitioner accepted, in direct dealings with its employees, their offer to withdraw from the Union in return for an increase in pay (R. 288–289, 306, 309). The finding that petitioner thereafter refused to bargain with the Union on the ground that the latter had consequently lost its representative status, was not disputed. Upon these findings, the court properly upheld the Board's conclusions that petitioner had violated Section 8 (1) and (5) of the Act.

As has been said by this Court (*National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332,

342), a major purpose of the National Labor Relations Act is to require collective bargaining, between the employer and the duly designated representative of its employees, "to the end that employment contracts binding on both parties should be made." In the instant case, while under the duty to bargain collectively toward this end and while under express commitment to begin collective bargaining negotiations within a few days, petitioner negotiated and entered into an arrangement which, if legal, would ensure the elimination of the designated representative and would effectively bar the achievement of one of the statute's objectives—a binding collective agreement. In the face of a formal request by the Union for a contract fixing specified rates of pay, petitioner dealt directly with the Union's constituents and granted them equivalent wage increases in the form of a unilaterally revocable management schedule, at the price of the repudiation of the Union. "To permit the employer [thus] to go behind the chosen agent and negotiate with the employees" for their abandonment of collective bargaining would clearly "result in nothing but disarrangement of the mechanism for negotiation created by the Act * * *." *National Labor Relations Board* v. *Acme Air Appliance Co.*, 117 F. (2d) 417, 420 (C. C. A. 2). Furthermore, since the employer's duty is to "keep his hands off completely and exert no influence over his em-

ployees, directly or indirectly" in their decisions concerning self-organization (*National Labor Relations Board* v. *Cleveland-Cliffs Iron Co.*, 133 F. (2d) 295, 301 (C. C. A. 6)), the Board correctly held that, whether petitioner or the group of employees was the source of the original impulse to deal directly, petitioner's acceptance of the offer to abandon the Union for a price, and its delivery of the *quid pro quo* on the morning of the day when collective negotiations were scheduled to begin, were in violation of its obligations under the Act (R. 288–290). Cf. *National Labor Relations Board* v. *Highland Shoe, Inc.*, 119 F. (2d) 218, 221 (C. C. A. 1). Petitioner having thus participated in the undermining of the Union's representative status, it was, by settled authority, not entitled to assert its success as a ground for withdrawing its recognition of the Union and refusing to bargain collectively. *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 339–340; *International Ass'n of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 81–82; *National Labor Relations Board* v. *P. Lorillard Co.*, 314 U. S. 512; *National Labor Relations Board* v. *Franks Bros. Co.*, decided July 27, 1943 (C. C. A. 1).

This is not to say that once the opportunity for an uninfluenced choice is restored by good-faith compliance with the Board's order and the passage of a reasonable period of time, the em-

ployees must continue to accept the Union as their representative, if they do not so desire. Sections 9 and 10 of the Act provide adequate machinery for the determination of representation "after unfair labor practices have been removed as obstacles to the employees' full freedom of choice." *International Ass'n of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 83.

2. The decision of the court below presents no conflict with the decisions of other courts, and petitioner therefore relies (Pet. 8–11) heavily upon asserted conflicts in the opinion of the Board, the opinion of the majority of the court sustaining the Board's order, and the concurring opinion of Judge Hand. This is not a conflict within the enumeration of Rule 38, par. 5 (b).

There is, moreover, no conflict at all on the only question at issue in this proceeding, *i. e.*, whether the Board's order is appropriate upon findings supported by the evidence. On this question, the opinions are agreed. The majority opinion notes, as an additional consideration justifying the Board's disregard of whether the conditional offer originated with petitioner or the group of employees, that a rule making origin the touchstone of illegality would hamper effective administration of the Act because of ease in evasion and difficulty in proof (R. 307). Judge Hand, rejecting this portion of the majority's reasoning (R. 308), agrees that in the instant case, the Board

properly disregarded the origin of the offer, because, whatever its source, the offer was inconsistent "with the pervasive purposes which the preamble [Section 1 of the Act, Appendix, *infra*, pp. 11–12] of the statute discloses" (R. 309–310). Contrary to the implications of petitioner's argument (Pet. 9–11), this basis for sustaining the Board's decision is not incompatible with Judge Frank's opinion, which expressly holds that the Board could properly find "the acceptance of *such an offer*[3] [to be] an unfair labor practice" (R. 306). [Italics supplied.]

Even, however, if we were to assume that the three opinions have no common ground at all, there would still be no basis for the contention that such inconsistencies, "if not clarified, [would] only lead to confusion" and that the issuance of the writ would therefore be warranted (Pet. 11). It is elementary that in such a situation the decision of the majority of the court controls the law for the circuit.

3. The decision below expressly turns on the particular facts of the case and presents no substantial question of general importance (R. 306):

> It is unnecessary for us [the majority of the court] to consider whether, when employees have once selected a bargaining representative, and especially when there has

[3] "Such an offer" refers to the offer made by the twelve employees to repudiate their bargaining representative on condition that petitioner would increase their wages.

> been no certification by the Board or an election, a majority of the employees may then, by informal action, repudiate that representative and bargain directly with the employer. Nor need we consider whether, as an invariable rule, it is an unfair labor practice for an employer to accept an offer made by a majority of the employees to repudiate a representative theretofore selected on condition that the employer will increase wages. It is enough to hold, and we do hold, that it was within the power of the Board to find that, *in this particular case,* acceptance of such an offer was an unfair labor practice. [Italics supplied.]

CONCLUSION

The decision below is correct and presents no conflict of decisions or question of general importance. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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SEPTEMBER 1943.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are as follows:

> SEC. 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.
>
> The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and

by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

U. S. GOVERNMENT PRINTING OFFICE, 1943

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 265

MEDO PHOTO SUPPLY CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The majority and concurring opinions of the court below (R. 304–307, 308–310) are reported in 135 F. (2d) 279. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 275–295) are reported in 43 N. L. R. B. 989.

JURISDICTION

The petition for a writ of certiorari was granted on October 11, 1943 (R. 318). The jurisdiction of this Court rests upon Section 240 (a)

of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether it is an unfair labor practice under Section 8 (1) and (5) of the Act for an employer, who has recognized and begun to bargain collectively with the representative designated by a majority of the employees in an appropriate unit, to negotiate, directly and in disregard of that representative, with a group of employees within the unit, respecting individual wage increases.

2. Whether it is an unfair labor practice under Section 8 (1) of the Act for an employer at the suggestion of his employees to grant them wage increases in return for their abandonment of a labor organization.

3. Whether it is an unfair labor practice under Section 8 (1) and (5) of the Act for an employer to refuse to bargain collectively with a labor organization which has lost its majority status because of defections caused by the employer's unfair labor practices.

4. Whether the Board, having found that an employer had interfered with the self-organization of its employees and had refused to bargain collectively with a labor organization designated by the majority of the employees in an appropriate unit, could validly order the employer to bargain with the labor organization where by the

time of the Board's hearing some of the union members had entered the armed forces of the United States and the evidence failed to disclose whether the employees who had designated the union still constituted a majority of the employees in the unit.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infr*, pp. 44–48.

STATEMENT

Upon the usual proceedings pursuant to Section 10 of the Act, the Board issued its findings of fact, conclusions of law, and order (R. 275–295). The facts, as found by the Board and shown by the evidence, may be summarized as follows:[1]

Petitioner, a New York corporation, is engaged in New York City in the purchase, sale, and distribution of photographic supplies and related equipment such as cameras, film, and papers (R. 278; 226–227).[2] Between May 21 and 23, 1941, 18 of the 26 employees in petitioner's shipping and receiving department, an appropriate bargaining unit (R. 278–280),[3] signed cards designating

[1] In the following statement, the references preceding the semicolons are to the Board's findings, and the succeeding references are to the supporting evidence.

[2] No jurisdictional question is involved.

[3] The appropriateness of this unit is not in question here.

Photo Employees Union, Local 21314, affiliated with the American Federation of Labor, hereinafter called the Union, as their collective bargaining agency (R. 280–281 and note 3 thereat; 228–229, 152–153, 10–14, 44–45).[4] On May 22 and 23, the Union requested petitioner to meet with it to negotiate a collective bargaining contract (R. 28; 15–16, 230), and on the latter day the Union filed with the Board a petition for certification as the exclusive bargaining representative of the shipping and receiving department employees (R. 281; 16–17, 233–234).

On June 4, 1941, a conference with respect to the Union's petition for certification was held in the regional office of the Board, attended by representatives of the Board, the petitioner and the Union (R. 281–282; 20–22). At this meeting, petitioner's attorney questioned the appropriateness of the bargaining unit, but declared that if the parties could agree as to the unit petitioner would consent to the Union's being certified and thereupon the parties "would automatically go into the process of bargaining" (R. 282; 20–22).

At a second conference, held on June 5, petitioner did not advert to its previously asserted doubt as to the unit, but its attorney requested a copy of the Union's proposed contract, explaining in substance that petitioner intended to "fight"

[4] The Union was at the time engaged in a drive to organize photo supply employees throughout New York City (R. 6–7).

the Union's right to certification only if the proposed contract were "too tough" and that it "certainly was not going to buy a pig in a poke * * *, by consenting to the Union being certified and then finding out what they had to bargain for" (R. 282–284; 22–24). The Union thereupon submitted its proposed agreement (R. 283–284; 25).[5] Petitioner's attorney, after examining it and consulting privately with petitioner's officials, stated that he believed the document afforded "a basis for negotiations, and we can arrive at an agreement" (R. 283–284; 25).

Petitioner's attorney then asked how many employees had signed union cards and requested the Union to present its cards as proof of its claim (R. 283; 53–54). The Union offered to submit its cards to an impartial third person for a check, but petitioner's attorney replied that he had no doubt as to the Union's majority status (R. 283; 54).[6]

The Union's representatives then sought to arrange for the promised certification, but petitioner's attorney declared that there was "no sense in going through all that. After all, you have got

[5] The wage rates proposed in the contract had been formulated at a meeting held in the union offices attended by all of the 18 employees of petitioner who had joined the Union (R. 90–91, 111–112).

[6] The Union representative did turn the cards over to a Board representative and agreed that the latter might check them against the petitioner's pay-roll signatures (R. 65, 20).

all you wanted, and we are going to negotiate with you." When the Union's agent insisted that "our people would feel very much better off" with an "official" certification, petitioner's attorney declared, among other things, that the Union was "making a mountain out of a molehill. * * * let us sit down and negotiate. That is the primary thing you are after" (R. 214; 25–26). It was then agreed to meet again on Monday, June 9, to negotiate respecting the contract proposed by the Union (R. 284–285; 26). Thus, at this second meeting petitioner waived its objections, if any, to the unit, conceded that the Union represented the necessary majority, recognized the Union, and agreed to meet with it again the following Monday to commence collective bargaining (R. 284–285).

Meanwhile, on Saturday, June 7, it was decided by some of the members of the Union that they would solicit from petitioner a wage increase upon the basis that they would abandon the Union if the increase were granted, but that they would continue as members of the Union if the request were denied (R. 285; 109, 122–123). Accordingly, that afternoon a group of 12 employees visited petitioner's Manager Hoppin; stated that they and six other employees who were unable to be present had decided among themselves that they would leave the Union if the petitioner would give them wage increases; and submitted a list of the wage

increases which they proposed (R. 285, 288; 231–232, 83–87, 106, 185–186, 239–241).[2] Hoppin advised the group that he would discuss their proposal with petitioner's president and suggested that they return on Monday, June 9, when he would give them petitioner's answer (R. 285; 101, 116, 178). The action of the employees in approaching petitioner at this time did not constitute a withdrawal of their designations of the Union; on the contrary, in doing so the employees clearly held themselves out as union members but were offering petitioner, for a price, namely wage increases, the power to veto their choice of a representative; and the Union accordingly continued to be the statutory exclusive representative for purposes of collective bargaining (R. 288).

On Monday morning, a committee of four of the employees called on Hoppin, who then informed them that petitioner was granting the increases substantially as requested (R. 285–286;

[2] The list they submitted contained the names of 16 union members and listed opposite each name the new rate of pay sought (R. 240–241, 228–229). The four employees who had been chosen as the union negotiating committee were introduced to Hoppin as the representatives who were to have spoken for the Union and during the ensuing discussion served as spokesmen for the group (R. 75, 112, 120, 240–241). The only authority which these employees had to speak for the six employees who were absent and whom they claimed to represent was based on the theory that these six employees as union members had at the union meeting participated in electing the four to the union negotiating committee (R. 75–77, 119–120).

101–102, 189, 241–242).[8] Petitioner's decision to take this action was occasioned solely by the employees' offer to withdraw from the Union if the raises were granted (R. 286).[9] The committee reported back to the other employees who agreed

[8] The following table shows the names of the 16 employees to whom Hoppin agreed to give increases, together with the designation of their job (R. 236), the amount of their wage rate prior to the increase (R. 236), the amount of the increase granted by Hoppin on June 9 (R. 241–242), and the amount of the increase sought by the Union in the contract it submitted (R. 88–89). All of the 16 were union members (R. 228–229).

Name	Job	Weekly wage prior to June 9	Weekly wage after increase	Weekly wage sought by union
Pergola	Porter	$12.00	$15.00	$17.00
Petrone	Porter	12.60	15.00	17.00
Koch	Porter	12.60	18.00	21.00
Sussman	Porter	12.60	15.00	17.00
Ritchey	Porter	12.60	15.00	17.00
Schroeder	Order clerk	12.60	15.00	17.00
Goshgarian	Order clerk	19.00	21.00	25.00
Schroer	Order clerk	12.60	18.00	21.00
Matthews	Order clerk	13.60	18.00	21.00
Abelow	Order clerk	15.00	18.00	21.00
Valentine	Order clerk	15.00	18.00	21.00
Caracci	Order clerk	15.00	18.00	21.00
Olivieri	Order clerk	15.00	18.00	21.00
Munrett	Shipping clerk	15.00	21.00	25.00
Seminari	Shipping clerk	17.00	21.00	25.00
Bruchbacher	Shipping clerk	16.00	21.00	25.00

[9] Hoppin testified that petitioner had decided prior to June 7 to grant wage increases in view of unusually good business (R. 192, 194–196), but the record showed that it was petitioner's normal practice to grant wage increases only at the end of each year (R. 191); and the Board did not credit his testimony that the increase had been contemplated before June 7 (R. 286).

to accept the increases granted (R. 286; 99, 104–105). The committee returned to advise Hoppin that the employees "felt that they did not need the Union and we would rather stay out" (R. 286; 98–99, 101–102).[10] The Union, however, was not told of this decision of the employees at this time.

Later the same day, the four employees comprising the Union's negotiating committee informed the union president for the first time while they were en route to the scheduled bargaining conference, that the employees no longer wished the Union to represent them (R. 287; 30–31, 124–125).[11] At the conference, petitioner's attorney stated that petitioner could not bargain with the Union because he understood that the organization no longer represented a majority, but that if the Union could prove otherwise by a consent election, he would see what could be done (R. 287; 31–32, 161, 175). In answer to the attorney's question, the four employees present again stated that the employees no longer wished

[10] As the employees were leaving Hoppin's office they inquired whether they would, "one or two at a time," be fired because of their conduct in joining the Union. Hoppin assured them that, "Once you leave this office, the whole matter will be forgotten" (R. 139, 232).

[11] The only reason given the union president for their change of mind, was the statement of several employees, "What can you do? You can't fight the firm. They are too big" (R. 31, 59).

the Union to represent them,"[12] and the meeting ended (R. 287; 174–175).

Upon the foregoing facts the Board concluded that petitioner had violated Section 8 (1) and (5) of the Act. It held that petitioner's action on June 7 and 9 in dealing directly with the employees in the unit as to wages while the Union continued to be their designated exclusive agent for bargaining as to such matter and while collective bargaining negotiations were pending with the Union, violated Section 8 (1) and (5) of the Act because such conduct denied the Union its statutory status as the *exclusive* collective bargaining representative (R. 289–290, 293). The Board in explanation of this determination stated (R. 288–289), "To permit the employer to go behind the chosen bargaining agent and negotiate with the employees individually, or with their committees, in spite of the fact that they had not revoked the agent's authority, would result in nothing but disarrangement of the mechanism for negotiation created by the Act, disparagement of the services of the union, whether good or bad, and acute, if not endless, friction, which it is the avowed pur-

[12] None of the employees at any time resigned from the union. And only the four employees on the negotiating committee did so much as orally to tell the Union representative they no longer desired to be represented (R. 287; 94–95, 107, 118, 122, 138, 150).

pose of the Act to avoid—or mitigate."[13] The Board pointed out that it was therefore "immaterial that the direct dealing emanated from the employees rather than from [petitioner]" (R. 289–290).

The Board also held that petitioner's grant of wage increases to the employees in acceptance of their proposal to withdraw from the Union if such increases were granted, constituted "interference with the self-organizational rights of its employees," in violation of Section 8 (1) of the Act (R. 291, 293) because petitioner was under a duty in the circumstances of the instant case "to refrain from action which would influence the employees to abandon the Union * * *" (R. 288–289).

Finally, the Board concluded that petitioner's refusal to negotiate with the Union on June 9 likewise constituted a refusal to bargain collectively, in violation of Section 8 (1) and (5) of the Act (R. 290, 293). The Board rejected petitioner's attempt to "excuse its refusal to bargain on and after June 9 on the basis of the alleged defections" because "even assuming that a number [of employees] sufficient to destroy the [Union's] majority had repudiated the Union be-

[13] In making the latter finding, the Board quoted from the opinion of the Circuit Court of Appeals for the Second Circuit in *National Labor Relations Board* v. *Acme Air Appliance Co., Inc.*, 117 F. (2d) 417, 420.

fore June 9," the defections were induced by petitioner's earlier unlawful conduct in dealing directly with the employees and granting the wage increase (R. 290). The Board stated that "the unfair labor practices of the [petitioner] cannot operate to destroy the exclusive representative status of the Union previously established by the untrammelled will of the majority of employees in the unit" (R. 290).[14]

At the hearing before the Board petitioner claimed that in the course of a normal turn-over of personnel in the unit subsequent to the unfair labor practices, several union members had left its employment and there was no showing that at the time of the hearing the Union continued to retain its majority status in the unit.[15] The Board de-

[14] In support of this proposition the Board cited the decision of this Court in *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U. S. 318. The Board also found (R. 287) that only 4 of the 18 employees who had joined the Union had informed that organization that they no longer desired it to represent them. Accordingly, it would appear that even on June 9 the Union's numerical majority in the unit of 26 employees had not been effectively destroyed, but, as is stated in the text, the Board based its conclusion as to the impropriety of petitioner's refusal to bargain with the Union on June 9 upon the broader ground that even if there had been resignations they were ineffective because of employer influence.

[15] Petitioner failed to prove how many employees were in the unit at the time of the hearing. It did offer to prove that eight employees were no longer working for it. One of the eight, Scott, was neither in the unit nor even a union member

termined that, even if the claimed loss of majority had occurred, it was nevertheless necessary to order petitioner to bargain collectively with the Union in order to remove the effects of petitioner's unlawful conduct. The Board further stated that it was to be assumed that, absent petitioner's unfair labor practices, the Union would have been able to maintain its majority status despite such turn-over, by enlistments from among the new workers, and that, in any event, in order to effectuate the policies of the Act, it was necessary to restore, as nearly as possible, the *status quo* existing before the unfair labor practices were committed (R. 292).

Accordingly, the Board ordered petitioner to cease and desist from its unfair labor practices, to bargain collectively upon request with the Union, and to post notices of compliance with the order (R. 293–295).

(R. 193–194, 152–153, 228–229). Another of the eight, Steinberg, was not a union member (R. 194, 228–229). Five of the remaining six were in the armed forces of the United States (R. 194) and therefore still within the unit under the Board's rule permitting employees in the armed forces to vote in elections. *Matter of Cudahy Packing Co.*, 29 N. L. R. B. 830, 835, 836; *Matter of Marcalus Mfg. Co., Inc.*, 33 N. L. R. B. 107, 111 n., 112; *Matter of Rudolph Wurlitzer Co.*, 41 N. L. R. B. 1074, 1076, 1077. Thus, petitioner's offer, even if accepted as true, would not have established that the Union had lost its majority status by a turn-over of employees.

On November 17, 1942, the Board filed its petition for enforcement in the court below and on April 28, 1943, the court handed down its opinion enforcing the Board's order (R. 304–307). Judge Learned Hand concurred in a separate opinion (R. 308–310). A decree enforcing the Board's order was entered on May 21, 1943 (R. 311–312). On August 16, 1943, petitioner filed a petition for a writ of certiorari, and on October 11, 1943, the petition was granted (R. 318).

SUMMARY OF ARGUMENT

I

The Board properly determined that petitioner, by negotiating with individual employees respecting wages in disregard of the Union which it had theretofore recognized as the statutory representative of its employees, engaged in an unfair labor practice within the meaning of Section 8 (1) and (5) of the Act. Where, as here, the employees have not revoked their designations of the Union and negotiations with it are pending, the employer is under a duty to carry on all negotiations respecting wages with the statutory representative and not to negotiate directly with the employees in the unit. Both the language of the Act, its rationale, and its legislative history show Congress intended to prohibit an employer from dealing with individual employees or groups of

employees after a statutory representative has been established. The decisions of the courts interpreting the Act uniformly support this view.

II

The Board properly determined that petitioner, by granting its employees a wage increase upon condition that they revoke their designation of the Union as their representative for purposes of collective bargaining, interfered with, restrained and coerced its employees in the exercise of their rights to self-organization and thereby engaged in an unfair labor practice within the meaning of Section 8 (1) of the Act. The grant of a wage increase in return for abandonment of a labor organization is economic coercion of employees in the exercise of their rights to self-organization. Such coercion is forbidden by the Act.

III

The Board properly determined that petitioner, by refusing to bargain with the Union after it had granted its employees the increase in wages in return for their abandonment of the Union, violated Section 8 (5) of the Act. Any defections from membership in the Union which were induced by petitioner's use of its economic power in violation of the Act, were properly to be disregarded in determining whether the Union still retained its majority designation at the time

petitioner refused to deal with it and did not excuse petitioner's refusal to bargain. *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 339–340.

IV

The Board properly ordered petitioner to bargain collectively with the Union as a remedy for its refusal to bargain. The evidence offered by petitioner to show that certain of its employees had entered the armed forces did not establish that the employees who had designated the Union had ceased to constitute a majority of the employees in the appropriate unit. However, even if the change in personnel in the unit had been sufficient to eliminate from petitioner's employ a majority of the persons who had designated the Union, the order to bargain collectively was still appropriate to remedy the unfair labor practice. The Board found that any absence of a present majority designation of the Union is to be attributed to the unfair labor practices. It pointed out that it is proper to assume that absent the unfair labor practices of the petitioner, the Union would have been able to obtain as members at least some of the new employees and would have maintained its majority status despite the turnover of personnel. Where the lack of a majority is thus traceable to an employer's unfair labor practices, the Board may properly require the employer to bargain collectively with the last

freely chosen representative. *National Labor Relations Board* v. *P. Lorillard Co.*, 314 U. S. 512, 513.

ARGUMENT

I

THE BOARD PROPERLY DETERMINED THAT PETITIONER, BY NEGOTIATING WITH INDIVIDUAL EMPLOYEES RESPECTING WAGES IN DISREGARD OF THE UNION WHICH IT HAD THERETOFORE RECOGNIZED AS THE STATUTORY REPRESENTATIVE OF ITS EMPLOYEES, VIOLATED SECTION 8 (1) AND (5) OF THE ACT

The Board held that petitioner's conduct on June 7 in negotiating directly with twelve employees as to wage increases, after a majority of the employees had selected and petitioner had recognized the Union as the exclusive representative for such bargaining, and while negotiations between petitioner and the Union were pending, itself constituted a violation of Section 8 (1) and (5) of the Act (R. 289, 290).

Petitioner does not controvert the legal principle that it is an unfair labor practice for an employer to bargain individually with employees in the unit at a time when they are represented by a labor organization chosen by a majority of the employees in the unit. Petitioner proceeds throughout its brief on the assumption that subsequent to the time it recognized the Union and before it met with the twelve employees, all of the employees had revoked their designation of the

Union (Br. 2, 5, 7, 10, 13). The Board found, however, that "the employees had not withdrawn their designation of the Union as their representative prior to June 9" (R. 287). In its findings respecting the June 7 conference between petitioner and the twelve employees, the Board pointed out that not only was there no evidence that the Union had ceased to represent the employees, but that no revocation of designation could be implied from their conduct in approaching petitioner because in doing so they held themselves out as union members (R. 288). The Board stated: "Far from communicating to the [petitioner] an abandonment of the Union, the employees there clearly conditioned such abandonment upon the granting of wage increases. Thus they held themselves out as union members, at the same time offering the [petitioner], for a price, the power to veto their choice of a representative" (R. 288). These findings are supported by the testimony of the employees that before approaching petitioner they decided to continue as members of the Union unless they obtained an increase and so informed petitioner (R. 231–232, 93–94, 105–108, 123).

Petitioner's brief proceeds upon the further erroneous assumption that its negotiations with the twelve employees constituted collective bargaining with the majority of the bargaining unit, and thereby superseded the necessity of bargaining with the previously chosen representative (Br. 2,

12, 17). But the evidence shows both that the twelve employees were not the majority of the unit, and that they did not purport to be acting on behalf of the unit.[16] Only twelve out of twenty-six employees in the unit called on petitioner (pp. 3, 6, *supra*). Four of the twelve acted as spokesmen for the group (R. 75, 112, 120, 239–241). Neither the four nor the twelve claimed any authority to speak for nor did they purport to negotiate on behalf of all the employees in the unit. Thus they sought wage increases only for sixteen union members (R. 240–241, 228–229). Though the twelve employees informed petitioner that they "spoke for" six union members who were unable to be present at the conference (R. 240), the assertion of such authority rested solely on the assumption that since the four employees who acted as spokesmen had been elected by all the union members at a union meeting as a union committee, they were empowered to speak for them (R. 119–120, 75–77). But authorization to speak as officer of the union does not, without more, include the power to supersede the union and act in its place. Petitioner thus negotiated with a minority of the employees in the unit who did not even purport to represent the unit as a whole. Even in the absence of a duly designated exclusive representa-

[16] It is thus unnecessary to decide in this case whether an employer can lawfully bargain with a majority of a unit instead of with a previously chosen representative whose authority has not been withdrawn.

tive, such negotiation, while not unlawful if limited to terms for the individuals composing the minority, would nevertheless not constitute the collective bargaining contemplated by the Act. The Board thus properly found that (R. 288–290, 292) petitioner's "act in dealing with its individual employees" did not constitute collective bargaining but was rather a violation of its obligation to bargain collectively. "Clearly to bargain directly with one's employees is not to bargain with their designated exclusive representative" (R. 288).[17]

Petitioner's repeated statement (Br. 2) that it made a "labor agreement" with its employees, uses "labor agreement" in other than its usual sense. The only agreement was the oral arrangement by which petitioner granted the wage increase to the 16 union members and was informed that they were therefore abandoning the Union (R. 98–99, 101–102, 150, 189, 228–229, 242). There was no signed agreement of any kind; no stable employment relations between the employer on the one hand and its employees on the other, dealing as equals, were envisaged. Equality of bargaining power between

[17] Cf. Sen. Rep. No. 573, 74th Cong., 1st Sess., where it is stated (p. 14): "Another protection for minorities is that the right of a majority group through its representatives to bargain for all is confined * * * to cases where the majority is actually organized 'for the purposes of collective bargaining * * *'. An organization which is not constructed to practice genuine collective bargaining cannot be the representative of all employees under this bill."

employees and management was not restored. It does not even appear, as Judge Hand noted (R. 309–310), that the group of employees who dealt directly meant to continue to act as a bargaining authority. On the contrary, the sole objective of the arrangement was to secure wage increases by unilateral dispensation from the employer for an unspecified time, in return for which the employees would abandon the only collective bargaining authority in the unit. In sum, what was contemplated here was the very opposite of collective bargaining such as Congress contemplated to stabilize employment relations and thereby promote industrial peace.

The law is well settled that an employer in ignoring a labor organization which has been designated by a majority of his employees and dealing instead with individual employees respecting a usual subject of collective bargaining such as wages, violates Section 8 (5) of the Act. As this Court has said, the obligation imposed on an employer to treat with the designated statutory representative, being exclusive, "imposed the negative duty to treat with no other." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 44. See also *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 548; *National Labor Relations Board* v. *Knoxville Publishing Co.*, 124 F. (2d) 875, 881, 883 (C. C. A. 6); *National Labor Re-*

lations Board v. *Martin Bros. Box Co.*, 130 F. (2d) 202, 204 (C. C. A. 7), certiorari denied, 317 U. S. 660; *McQuay-Norris Manufacturing Co.* v. *National Labor Relations Board*, 116 F. (2d) 748, 751 (C. C. A. 7), certiorari denied, 313 U. S. 565.[18]

Petitioner failed to comply with this duty. Instead, petitioner bargained with a group of twelve employees. Obviously, as the Board found (R. 289), petitioner's conduct in bargaining as to wages with others than the statutory representative denied the latter its statutory status as the exclusive representative of the unit for purposes of collective bargaining. "Clearly to bargain directly with one's employees is not to bargain with their designated exclusive representative

[18] Cf. Sen. Rep. No. 573, 74th Cong., 1st Sess., p. 13, where it is stated: "Majority rule carries the clear implication that employers shall not interfere with the practical application of the right of employees to bargain collectively through chosen representatives by bargaining with individuals or minority groups in their own behalf after representatives have been picked by the majority to represent all." Cf. also H. Rep. No. 1147, 74th Cong., 1st Sess., p. 20: "As a necessary corollary [of majority rule]; it is an act of interference * * * for an employer, after representatives have been so designated by the majority, to negotiate with individuals or minority groups in their own behalf on the basic subjects of collective bargaining." Additional legislative history of this provision is collected in the Board's brief in *J. I. Case Co.* v. *National Labor Relations Board*, No. 67, this Term, pp. 23–28. For Board decisions holding individual bargaining during the pendency of an exclusive representative to be violative of Section 8 (1) and (5), see *Matter of The Stolle Corp.*, 13 N. L. R. B. 370, 381–382, and *Matter of Schierbrock Motors*, 15 N. L. R. B. 1109, 1113–1115.

* * *." *National Labor Relations Board* v. *Highland Shoe, Inc.*, 119 F. (2d) 218, 221 (C. C. A. 1). The Board could properly find, as it did (R. 289), quoting from the opinion of the Second Circuit Court of Appeals in *National Labor Relations Board* v. *Acme Air Appliance Co., Inc.*, 117 F. (2d) 417, 420, that such conduct of an employer would "result in nothing but disarrangement of the mechanism for negotiation created by the Act, disparagement of the services of the union, whether good or bad, and acute, if not endless, friction, which it is the avowed purpose of the Act to avoid or mitigate."[19] These considerations fully support the Board's determination that petitioner violated Section 8 (1) and (5) of the Act.

II

THE BOARD PROPERLY FOUND THAT PETITIONER'S GRANT OF A WAGE INCREASE IN RETURN FOR ITS EMPLOYEES' ABANDONMENT OF THE UNION VIOLATED SECTION 8 (1) OF THE ACT.

Petitioner does not deny that its grant of the wage increase was intended to and did have the effect of causing its employees to leave the Union. Indeed, petitioner argues that it would have

[19] *M. H. Ritzwoller Co.* v. *National Labor Relations Board*, 114 F. (2d) 432, 435 (C. C. A. 7); *Stewart Die Casting Corp.* v. *National Labor Relations Board*, 114 F. (2d) 849, 853 (C. C. A. 7), certiorari denied, 312 U. S. 686; *National Labor Relations Board* v. *Grower-Shipper Ass'n*, 122 F. (2d) 368, 377 (C. C. A. 9); *National Labor Relations Board* v. *Knoxville Publishing Co.*, 124 F. (2d) 875, 881 (C. C. A. 6).

violated "the spirit of the Act" had it refused to give the increase because its refusal would have caused its employees to remain union members and petitioner thereby would have "dictated to its employees in the free choice of their representative" (Br. 14). Petitioner does not explain how it reaches the conclusion that, although a refusal to grant the increase would have dictated to its employees that they should remain in the Union, granting the increase did not dictate to the employees that they should leave the Union. The Board found that petitioner's decision to grant the increase "was occasioned solely by the employees' offer to withdraw from the Union if the raises were granted" (R. 286), that petitioner "was under a duty to refrain from action which would influence the employees to abandon the Union, and its action in granting the increases constituted interference with the self-organizational rights of its employees" (R. 288–289).

To permit an employer thus to influence employees as to self-organization is plainly repugnant to the policies and purposes of the Act. It is well settled that the employer is not permitted to participate in any way in the employees' organizational activities for collective bargaining; such matters are left for decision to the employees alone and the employer is required to "keep his hands off completely and exert no influence over his employees, directly or indirectly in their effort to organize for purpose of collective bargaining."

National Labor Relations Board v. *Cleveland-Cliffs Iron Co.*, 133 F. (2d) 295, 301 (C. C. A. 6). The basic premise upon which this well settled rule rests of course is that industrial strife will be lessened and stable industrial relations will most readily be established if employees are entirely free to make their own decisions as to organization and if, accordingly, the representative they select is their "true" representative. It is difficult to conceive of more obvious or direct interference with employees' rights of self organization than the grant by an employer of wage increases in acceptance of the employees' offer to abandon unionization if such increases are granted.[26]

[26] The grant of wage increases for the purpose of interfering with self-organization of employees is a familiar device. E. g.; *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 460; *National Labor Relations Board* v. *American Potash & Chemical Corp.*, 98 F. (2d) 488, 494 (C. C. A. 9), certiorari denied, 306 U. S. 643; *National Labor Relations Board* v. *Christian Board of Publication*, 113 F. (2d) 678, 683 (C. C. A. 8); *National Labor Relations Board* v. *Crown Can Co.*, 138 F. (2d) 263, 266, 267 (C. C. A. 8), certiorari denied February 7, 1944, No. 552, this Term; *National Labor Relations Board* v. *W. A. Jones Foundry & Machine Co.*, 123 F. (2d) 552, 553–554 (C. C. A. 7); *M. H. Ritzwoller Co.* v. *National Labor Relations Board*, 114 F. (2d) 432, 435 (C. C. A. 7); *Rapid Roller Co.* v. *National Labor Relations Board*, 126 F. (2d) 452, 455 (C. C. A. 7), certiorari denied, 317 U. S. 650; *Southern Colorado Power Co.* v. *National Labor Relations Board*, 111 F. (2d) 539, 543–544 (C. C. A. 10), enf'g 13 N. L. R. B. 699, 710–711; *National Labor Relations Board* v. *Fitzpatrick & Weller, Inc.*, 138 F. (2d) 697, 699 (C. C. A. 2).

Petitioner's direct grant of the wage increase in the circumstances of this case was unlawful under another firmly established principle. An employer may not grant wage increases or other concessions directly to his employees during the pendency of negotiations on the subject with an exclusive collective bargaining representative. E. g., *Great Southern Trucking Co.* v. *National Labor Relations Board*, 127 F. (2d) 180, 186 (C. C. A. 4), certiorari denied, 317 U. S. 652; *National Labor Relations Board* v. *H. G. Hill Stores, Inc.*, decided February 10, 1944 (C. C. A. 5); *National Labor Relations Board* v. *Barrett Co.*, 135 F. (2d) 959, 961 (C. C. A. 7); *National Labor Relations Board* v. *George P. Pilling & Son Co.*, 119 F. (2d) 32, 38 (C. C. A. 3); *Inland Lime & Stone Co.* v. *National Labor Relations Board*, 119 F. (2d) 20, 22 (C. C. A. 7); *National Labor Relations Board* v. *Chicago Apparatus Co.*, 116 F. (2d) 753, 756, 759 (C. C. A. 7), enforcing 12 N. L. R. B. 1002, 1011; *National Labor Relations Board* v. *National Licorice Co.*, 104 F. (2d) 655, 656 (C. C. A. 2), affirmed as modified in other respects, 309 U. S. 350; cf. *Singer Mfg. Co.* v. *National Labor Relations Board*, 119 F. (2d) 131, 136 (C. C. A. 7), certiorari denied, 313 U. S. 595. Such action operates no less effectively to undermine collectve barganing than a campaign of coercion and intimidation designed to destroy the majority status of a collective bargaining representative. It plainly disparages the

services of the union, suggests that organization is not necessary, and inevitably induces defections from it. The gravity of the offense is underlined in the instant case by the facts that the employer here had been specifically advised by the employees that they would abandon the Union if wage increases were granted them directly, and that, as the Board found (R. 286), petitioner's determination to grant the increases was "occasioned solely by the employees' offer to withdraw from the Union if the raises were granted." In short, the employer here was assured in advance that such normally interfering tactics would be completely successful, and the grant of the wage increases was made with the deliberate intent of defeating the Union.

Nor is petitioner's conduct permissible because the suggestion originated with the employees. The Board held that in the circumstances of this case it was "immaterial from whence came the impulse to deal directly" (R. 290). It seems almost too clear for argument that the fact that the initial suggestion for petitioner's conduct in the instant case came from the employees does not *per se* mitigate the disruptive effects upon collective bargaining among petitioner's employees, which were its intended consequence. Whatever the source of the idea, petitioner's conduct in dealing directly with the employees and granting them wage increases in acceptance of their offer to abandon the Union in return for such wage increases, de-

cisively influenced their choice, and violated petitioner's duty to "keep his hands off completely and exert no influence over his employees, directly or indirectly, in their efforts to organize for purpose of collective bargaining" (*National Labor Relations Board* v. *Cleveland-Cliffs Iron Co.*, 133 F. (2d) 295, 301 (C. C. A. 6)). Likewise, petitioner's act of dealing directly with a group of employees as to wages, despite the fact that the Union was the recognized designated exclusive agent for such dealing, plainly disrupted the scheme envisaged by the Act, and this, too, without regard to the source of petitioner's impulse to do so.

The courts have uniformly held that "The act prohibits unfair labor practices in all cases. It permits no immunity because the employer may think that the exigencies of the moment require infraction of the statute. In fact, nothing in the statute permits or justifies its violation by the employer." *National Labor Relations Board* v. *Star Publishing Co.*, 97 F. (2d) 465, 470 (C. C. A. 9).[21] And they have consistently upheld Board

[21] To the same effect see: *National Labor Relations Board* v. *Hudson Motor Car Co.*, 128 F. (2d) 528, 532, 533 (C. C. A. 6); *South Atlantic Steamship Co.* v. *National Labor Relations Board*, 116 F. (2d) 480 (C. C. A. 5), certiorari denied, 313 U. S. 582; *National Labor Relations Board* v. *Isthmian Steamship Co.*, 126 F. (2d) 598 (C. C. A. 2); *National Labor Relations Board* v. *John Engelhorn & Sons*, 134 F. (2d) 553, 557–558 (C. C. A. 3); *Wilson & Co.* v. *National Labor Relations Board*, 123 F. (2d) 411, 417 (C. C. A. 8); *National Labor Relations Board* v. *Polson Logging Co.*, 136 F. (2d)

findings of unfair labor practices despite the employer's contention that the acts or statements which the Board found to be violative of the Act were made in response to questions or suggestions or compulsions by the employees, and were not initiated by the employer.[22] The sense of these decisions is that the employer's conduct is not rendered lawful merely because he may not have been motivated by anti-union animus; the sole test is whether or not his conduct can be squared with or frustrates the Congressional mandate in the Act.

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314 (C. C. A. 9); *Warehousemen's Union* v. *National Labor Relations Board*, 121 F. (2d) 84, 87 (App. D. C.), certiorari denied, 314 U. S. 674; *National Labor Relations Board* v. *Weirton Steel Co.*, 135 F. (2d) 494, 495–496 (C. C. A. 3). See, also, *National Labor Relations Board* v. *J. I. Case Co.*, 134 F. (2d) 70, 71–72 (C. C. A. 7), certiorari granted, No. 67, this Term; *West Virginia Glass Specialty Co.* v. *National Labor Relations Board*, 134 F. (2d) 551, 552 (C. C. A. 4), certiorari denied, No. 97, this Term; *National Labor Relations Board* v. *Thompson Products*, 130 F. (2d) 363 (C. C. A. 6); *Atlas Underwear Co.* v. *National Labor Relations Board*, 116 F. (2d) 1020, 1022–1023 (C. C. A. 6).

[22] Thus, an employer may not form a company union because his employees ask him to do so. *Edward G. Budd Mfg. Co.* v. *National Labor Relations Board*, 138 F. (2d) 86 (C. C. A. 3), enforcing 41 N. L. R. B. 872, 876, 882–883, petition for certiorari pending, No. 630, this Term; cf.; *National Labor Relations Board* v. *Hudson Motor Car Co.*, 128 F. (2d) 528, 532, 533 (C. C. A. 6); *National Labor Relations Board* v. *Metal Mouldings Corp.*, decided April 6, 1943 (C. C. A. 6), enforcing as modified 39 N. L. R. B. 107, 120–123; see also *National Labor Relations Board* v. *Electric Vacuum Cleaner Co.*, 315 U. S. 685.

III

THE BOARD PROPERLY FOUND THAT PETITIONER'S REFUSAL TO BARGAIN WITH THE UNION UPON THE GROUND THAT THE UNION HAD LOST ITS MAJORITY AFTER THE GRANT OF THE WAGE INCREASE CONDITIONED ON ABANDONMENT OF THE UNION, VIOLATED SECTION 8 (1) AND (5) OF THE ACT

Petitioner admittedly refused to bargain with the Union on June 9, on the ground that a sufficient number of employees had allegedly withdrawn from the Union as a consequence of petitioner's direct grant to them of wage increases earlier that day, so as to destroy the Union's majority status (*supra*, p. 9). Assuming that a sufficient number of employees did in fact revoke their designation of the Union so as to impair the Union's majority,[23] the Board properly held that such defections "cannot operate to destroy the exclusive representative status of the Union previously established by the untrammelled will of the majority of the employees in the unit," and

[23]As has been noted (*supra*, pp. 7, 12, fn. 14), the Board found (R. 287) that the employees had not withdrawn their designation of the Union as their representative prior to June 9 and that even then only 4 of the 18 who had joined the Union informed the organization that they no longer desired to be represented by it. However, the Board apparently did not rely upon this fact in concluding that petitioner's subsequent conduct was unlawful but held that the conduct was unlawful "even assuming that a number sufficient to destroy the majority had repudiated the Union before June 9" (R. 290). Accordingly, we make the same assumption in this argument.

to excuse petitioner from its duty to bargain with that representative (R. 290).

The alleged defections from the Union on which petitioner relies were induced, as the Board found (R. 290), by petitioner's action in dealing directly with the employees and granting them wage increases. This action constituted an unfair labor practice. We have already demonstrated the impropriety of petitioner's direct bargaining with the employees after they had designated an exclusive representative for such purpose (pp. 17–23, *supra*). We have likewise demonstrated the unlawfulness of the conduct resulting in the wage increase (pp. 23–29, *supra*).

It is well settled that defections from a Union which have been induced by the employer's unlawful practices "are not effective either to change the bargaining representative previously chosen or to excuse [employers] from their duty to bargain in good faith with that representative." *National Labor Relations Board* v. *Dixie Motor Coach Corp.*, 128 F. (2d) 201, 202 (C. C. A. 5); *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 340; *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82. Accordingly, the Board properly found (R. 290) that petitioner's refusal to bargain with the Union on June 9 may not be excused by reliance upon alleged defections induced by petitioner's direct

dealings with the employees and grant of wage increases, and a clear violation of Section 8 (1) and (5) of the Act is presented independently of the considerations previously discussed.

IV

THE BOARD PROPERLY ORDERED PETITIONER TO BARGAIN COLLECTIVELY WITH THE UNION AS A REMEDY FOR ITS UNFAIR LABOR PRACTICES

As a remedy for its unfair labor practices the Board ordered petitioner to bargain collectively with the Union (R. 294–295). While petitioner has not either in its petition for certiorari or in its brief, presented any question as to the propriety of the order, should the Board's findings respecting the unfair labor practices be sustained, nevertheless petitioner without arguing the point asserts that due to a turnover of personnel the Union no longer represents a majority of the employees in the appropriate unit (Br. 6).

Petitioner's claim (*ibid.*) that only one of the 18 employees who had joined the Union is still in petitioner's employ is based on no evidence either presented or offered before the Board but rests solely on an assertion made in petitioner's answer to the petition for enforcement (R. 317). Petitioner never moved for leave to adduce such evidence. Before the Board it did offer to prove that eight of the 26 employees who had been in the unit at the time of the unfair labor practices were

no longer working for it. However, petitioner did not offer to prove that any of the eight employees had been replaced by other employees, nor how many employees were in the unit at the time of the hearing, nor how many of them in fact were not union members. Of the eight employees as to whom petitioner offered evidence, one, Scott, had never been in the unit nor a union member (R. 193–194, 152–153, 228–229); another, Sternberg, was never a union member (R. 194, 228–229); five of the remaining six were in the armed forces of the United States (R. 194) and therefore still within the unit under the Board's uniform decisions.[24] Thus, petitioner's offer of proof, even if accepted as true, would not have established that the Union had lost its majority status by a turnover of employees.

The Board considered petitioner's contention that the Union had ceased to represent a majority of the employees by reason of a turnover and decided that even if such were the case, it did not warrant withholding its normal order directing petitioner to remedy its refusal to bargain by bargaining collectively with the Union (R. 291–292). The Board stated that it was necessary, in order to effectuate the policies of the Act, to restore as nearly as possible the *status quo* existing before

[24] *Matter of Cudahy Packing Co.*, 29 N. L. R. B. 830, 835, 836; *Matter of Marcalus Mfg. Co., Inc.*, 33 N. L. R. B. 107, 111 n., 112; *Matter of Rudolph Wurlitzer Co.*, 41 N. L. R. B. 1074, 1076, 1077.

the unfair labor practices were committed, and that it was to be assumed that, absent petitioner's unfair labor practices, "the Union would have been able to obtain as members at least some of the new employees and would have maintained its majority status despite the turnover of personnel" (R. 292). The court below, citing the decision of this Court in *National Labor Relations Board* v. *P. Lorillard Co.*, 314 U. S. 512, 513, enforced the order. It stated: "That the union may have lost its majority since the employer refused to bargain does not authorize us to direct a new election; that was a matter for the Board to determine, and it has done so" (R. 307). We believe that the order of the Board, thus enforced by the court, was permissible.

The propriety of the challenged portion of the Board's order is fully disposed of by the decisions of this Court in the *Lorillard* and *Machinists*[25] cases. In the former, the employer resisted the Board's bargaining order upon the alleged basis that after commission of the unfair labor practices but before the Board's decision, the labor organization with which the employer had refused to bargain had lost its majority status for reasons asserted to be unrelated to the employer's unlawful acts. Essentially, this is petitioner's contention in the instant case. In the *Lorillard* case, the

[25] *International Ass'n of Machinists* v. *National Labor Relations Board*, 311 U. S. 72.

Circuit Court of Appeals for the Sixth Circuit had held that "lapse of time and the change in the conditions" caused by other factors than the employer's refusal to bargain "demonstrate that the union may no longer represent a majority" (117 F. (2d) 921, 925). It therefore conditioned enforcement of the Board's bargaining order upon the holding of an election to determine whether "the union now represents a majority." This, likewise, is the relief sought by petitioner in the instant case. This Court reversed the ruling of the circuit court of appeals in the *Lorillard* case, stating in a *per curiam* opinion:

> The Board had considered the effect of a possible shift in membership, alleged to have occurred subsequent to Lorillard's unfair labor practice. But it had reached the conclusion that, in order to effectuate the policies of the Act, Lorillard must remedy the effect of its prior unlawful refusal to bargain by bargaining with the union shown to have had a majority on the date of Lorillard's refusal to bargain. This was for the Board to determine, and the court below was in error in modifying the Board's order in this respect. *Labor Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318, 339–340; *I. A. of M.* v. *Labor Board*, 311 U. S. 72, 82. * * *

In the *Machinists* case, the employer likewise claimed that the union with which it had refused to bargain had lost its majority status after the

refusal, not because of its unfair labor practices, but because of an intervening jurisdictional strike (Record, No. 16, October Term 1940, pp. 12–13). This Court said that it was entirely proper for the Board to refuse to conduct an election or otherwise notice the alleged loss of majority, since such claims were matters for determination in certification proceedings under Section 9 of the Act "after unfair labor practices have been removed as obstacles to the employees' full freedom of choice" (311 U. S., at 83). In addition, after pointing out that it was for the "expert judgment" of "the Board, not the courts, to determine how the effect of prior unfair labor practices may be expunged," the Court stated (311 U. S., at 82):

> It cannot be assumed that an unremedied refusal of an employer to bargain collectively with an appropriate labor organization has no effect on the development of collective bargaining. See *National Labor Relations Board* v. *Pacific Greyhound Lines*, 303 U. S. 272, 275. Nor is the conclusion unjustified that unless the effect of the unfair labor practices is completely dissipated, the employees might still be subject to improper restraints and not have the complete freedom of choice which the Act contemplates. Hence the failure of the Board to recognize petitioner's notice of change was wholly proper. *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318, 339–340.

In the present case, in accord with the practice sustained in the *Lorillard* and *Machinists* decisions, the Board, as has been noted (pp. 12–13, 33–34, *supra*), found that (R. 292):

> It was the [petitioner's] act in dealing with its individual employees which occasioned the initial defections from the Union * * *. It cannot now be permitted to evade its duty to bargain with the Union by reason of the fact that new employees, who are not shown to be members of the Union, have since been hired to replace some of those who were members of the Union. We assume that, absent the unfair labor practices of the [petitioner], the Union would have been able to obtain as members at least some of the new employees and would have maintained its majority status despite the turnover of personnel. In any event, in order to effectuate the policies of the Act, we must restore, as nearly as possible, the *status quo* before the unfair labor practices were committed.

It is thus apparent, we think, that the Board's findings and bargaining order are in exact accord with the *Lorillard* and *Machinists* decisions.[26]

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[26] The circuit courts of appeals have uniformly so interpreted the *Lorillard* decision. In addition to the holding of the court below in the instant case, see *National Labor Relations Board* v. *Franks Bros. Co.*, 137 F. (2d) 989 (C. C. A. 1), petition for certiorari granted, No. 521, this Term; *Great Southern Trucking Co.* v. *National Labor Relations Board*,

Those holdings proceed upon the rationale that employees join unions in order to secure collective bargaining. Consequently, whether or not the employer bargains lawfully with a union chosen by the employees is normally decisive of its ability to secure and retain members, and an unremedied refusal of an employer to bargain collectively with an appropriate labor organization discourages employee adherence to and affiliation with that organization. While this discouraging effect is operative, the precise or probable weight of other factors which might be thought to obscure or destroy the representative status of the union cannot be isolated and separately evaluated. And an order to bargain is necessary and appropriate to eradicate the effects of the prior unlawful conduct.

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decided January 10, 1944 (C. C. A. 4, on contempt); *National Labor Relations Board* v. *A. Sartorius & Co., Inc.*, decided January 31, 1944 (C. C. A. 2); *National Labor Relations Board* v. *Clinton E. Hobbs Co.*, 132 F. (2d) 249, 252 (C. C. A. 1); *National Labor Relations Board* v. *Burke Machine Tool Co.*, 133 F. (2d) 618, 621 (C. C. A. 6); *National Labor Relations Board* v. *Porcelain Steels, Inc.*, 138 F. (2d) 840 (C. C. A. 6). See also *Oughton* v. *National Labor Relations Board*, 118 F. (2d) 486, 494–499 (C. C. A. 3), certiorari denied, 315 U. S. 797; *National Labor Relations Board* v. *Poultrymen's Service Corporation*, 138 F. (2d) 204 (C. C. A. 3). Cf. *National Labor Relations Board* v. *Karp Metal Products Co.*, 134 F. (2d) 954 (C. C. A. 2). Pursuant to the remand in the last case, the Board made Supplemental Findings of Fact, 51 N. L. R. B. 621, whereupon its order was enforced on October 23, 1943, by the Circuit Court of Appeals for the Second Circuit without opinion. A petition for certiorari is pending, No. 602, this Term.

This rationale is not rendered inoperative by the circumstance that the majority is apparently lost, as in the instant case, not only by defections of the original union members but also by the fact that new employees, recruited after the unfair labor practices were committed, allegedly failed to join the Union. In themselves, these alleged facts do not warrant an inference that the restraints engendered by the employer's illegal conduct are no longer operative. For unremedied unfair labor practices exercise a coercive effect not only upon the immediate victims, but upon future employees as well. Whether the loss of majority be attributable to the defections of old members or the failure of the newly hired employees to join the Union, it is clear that it might not and normally would not have occurred if the representative had been treated by the employer in accordance with the requirements of the statute.

In the present case petitioner does not show and there is no possible way of showing that the Union would not have been able to maintain its majority status if petitioner had in the first instance complied with the statute. Indeed, petitioner does not even suggest that the asserted indifference of the new employees to the Union arises from circumstances unrelated to its unfair labor practices. On the other hand, it is fair to assume, as did the Board (R. 292), that had petitioner dealt with the Union as it was required

by law to do, the Union would have been able to recruit the support of the new personnel. It was within the province of the Board to draw this factual inference; since there was plainly "a rational basis for the [Board's] conclusion," the Court will not look behind it. *Dobson* v. *Commissioner*, No. 44, decided December 20, 1943, and cases cited.

No reason is offered by petitioner and none suggests itself why a contract, the normal end product of the collective bargaining process, would not have been consummated. Moreover, the continued recognition and dealing with the Union would itself have afforded the Union a powerful impetus toward further organization, for, as this Court has pointed out (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 267), "once an employer has conferred recognition on a particular organization it has a marked advantage over any other in securing the adherence of employees * * *." Two authorities in the field of labor relations have stated:

> Where labor turnover is high the union's majority may be diluted rapidly by a continued influx of nonunion men into the plant * * *. Union officers generally appear to believe, however, that this inadequacy is not serious. When the union has no strong rivals in the plant, when it commands a safe majority, and when it

> enjoys contractual relations with the employer, it is usually not very hard to persuade a majority of new employees to sign up.[27]

And quite naturally, new employees coming to work for petitioner would be far more reluctant to join the Union in the present circumstances than they would if it were operating as a "going concern" in bargaining with petitioner.

In short, it would be arbitrary to assume that the Union could not command sufficient support among the new employees to sustain itself, if petitioner had dealt with it as the statute required and the Union had thus continued to operate as a "going concern" among the employees. Since, however, petitioner, by its unlawful conduct, created an atmosphere which made normal growth of the Union impossible, it may not now resort to its labor turn-over as a bar to a bargaining order. Only by such order is complete cancellation of the employer's unlawful conduct achieved and the unfair labor practices eradicated as from the

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[27] Reynolds, Lloyd G., and Killingsworth, Charles C., *The Union Security Issue*, Annals of the American Academy of Political and Social Science, vol. 224, Nov. 1942, pp. 32, 38. See also Feller, Alexander, and Hurwitz, Jacob E., *How to Deal with Organized Labor* (N. Y. 1937), pp. 6–7; Cummins, E. E., *The Labor Problem in the United States* (N. Y. 1935), p. 207; Stein, Emanuel, and Davis, Jerome, *Labor Problems in America* (N. Y. 1940), p. 664; Slichter, Sumner, *The Government and Collective Bargaining*, Annals of the American Academy of Political and Social Science, vol. 178, March 1935, pp. 107, 116.

beginning. A contrary holding would permit an employer to profit from the fruits of his own unfair labor practices, would give full scope to unfair labor practices in achieving their intended result, and would substantially hinder the development of genuine collective bargaining.

No valid contention may be made that to require present bargaining with the Union is to saddle upon the employees a bargaining representative which they may not desire. Until the Board's order has been faithfully carried out, the employees' real desires are "matters of speculation and argument." *National Labor Relations Board* v. *Brown Paper Mill Co.*, 108 F. (2d) 867, 872 (C. C. A. 5), certiorari denied, 310 U. S. 651. The Board's order does not grant to the Union a permanent status as the bargaining agent, or status for any fixed period of time. On the contrary, should the employees, after conditions permitting a free choice have been restored by compliance with the Board's order, really desire a different representative, they may readily secure one. As this Court noted in the *Machinists* case, the Act itself assures that the employees will not have an unwanted representative, for Section 9 provides "adequate machinery for determining in certification proceedings questions of representation after unfair labor practices have been removed as obstacles to the employees' full freedom of choice" (311 U. S. at 83).

CONCLUSION

For the forgoing reasons, it is respectfully submitted that the decision below should be affirmed.

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FEBRUARY 1944.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449; 29 U. S. C., Sec. 151, *et seq.*) are as follows:

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce * * *.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right to employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by

encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10.

* * * * *

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

(e) The Board shall have power to petition any circuit court of appeals of the

United States * * * within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken

before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. * * *

U. S. GOVERNMENT PRINTING OFFICE 71544

SUPREME COURT OF THE UNITED STATES.

No. 265.—October Term, 1943.

Medo Photo Supply Corporation, Petitioner, vs. National Labor Relations Board.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 10, 1944.]

Mr. Chief Justice Stone delivered the opinion of the Court.

Petitioner recognized a labor union as the bargaining representative of its employees. At their request and upon their statement that they were dissatisfied with the union and would abandon it if their wages were increased, petitioner negotiated with them without the intervention of the union, granted the requested increases in wages and thereafter refused to recognize or bargain with the union. The only questions raised by the petition for certiorari are whether in the circumstances, petitioner's negotiations with its employees, its payment of increased wages, and its refusal to bargain with the union constituted unfair labor practices in violation of §§ 8(1) and (5) of the National Labor Relations Act, 29 U. S. C. §§ 158(1) and (5).

Upon complaint of the National Labor Relations Board charging petitioner with unfair labor practices, issued pursuant to § 10 of the Act, 29 U. S. C. § 160, the Board found that petitioner had violated §§ 8(1) and (5) of the Act by interfering with its employees in the exercise of their rights to bargain collectively, guaranteed by § 7 of the Act, 29 U. S. C. § 157, and by refusing to bargain with a union representing its employees. The Board entered the usual order directing petitioner to cease the unfair labor practices so found, and requiring it to bargain with the union. 43 N. L. R. B. 989. On the Board's petition to enforce its order, the Court of Appeals for the Second Circuit overruled petitioner's contentions that the union, at the time of the alleged unfair labor practices, no longer represented petitioner's employees for purposes of collective bargaining and directed compliance with the order. 135 F. 2d 279. We granted certiorari,

320 U. S. 723, as the case involves questions of importance in the administration of the National Labor Relations Act.

The Board made findings supported by evidence that after eighteen of the twenty-six employees in petitioner's shipping and receiving department, constituting an appropriate bargaining unit, had designated the union as their bargaining agent, petitioner, on June 4th and 5th, 1941, recognized it as the exclusive bargaining representative of the employees. The union having proposed a contract providing for an increase of wages for the employees, petitioner agreed to meet the union representatives on June 9, 1941 in order to begin collective bargaining.

Two days before that date, twelve of the employees who were members of the union, waited on petitioner's manager and stated that they and the six other members had no desire to belong to the union if through their own efforts they could obtain wage increases, a list of which they submitted. The manager, at that time, declined to discuss the union, but stated that he would consider the request for wage increases with petitioner's president on the latter's return to the office on June 9th, and asked the employees to return on that day.

On June 9th, the manager, after a conference with the president, met with a committee of four of the employees who had conferred with him two days before. He advised them that petitioner would grant substantially the requested wage increases. The committee then withdrew to convey this message to the other employees, who thereupon agreed to accept the wage increases. The committee returned to inform the manager of this and that the employees "felt that they did not need the union, and we would rather stay out". Later in the day, the committee notified the union representative that the employees no longer desired the union to represent them. At a meeting on the same day with the representatives of the union, at which this committee was present, petitioner's attorney stated that he understood that the union no longer represented a majority of the employees and he declined to negotiate with it unless it were established by an election that it did.

From this, and from evidence which it is unnecessary to detail, the Board concluded, and we accept its findings, that the employees had not revoked their designation of the union as their bargaining agent before the wage increases were promised by petitioner's

manager on June 9th; that the increases were induced by negotiations begun with petitioner on June 7th and concluded on June 9th before they had repudiated the union; that petitioner's determination to increase wages was "occasioned solely by the employees' offer to withdraw from the union if the raises were granted"; and that the employees' defection from the union was induced by petitioner's conduct in dealing directly with the employees.[1]

In sustaining the Board's order the Court of Appeals assumed that as there had been no election or certification of the union as their bargaining representative, the employees were free to revoke their designation of it and to negotiate directly with the employer for an increase in wages, without the intervention of the union. But it thought that if such a proposal came from the employer, it would be a forbidden interference with the collective bargaining process and it concluded that, in view of the difficulties of determining whether in fact such an offer, ostensibly coming from the employees, was induced by the employer, the Board could conclude that the mere acceptance by the employer of the employees' offer was an unfair labor practice. A concurring judge thought that the case was stripped of any intimation of employer control but that the Board's order should be sustained on the ground that it was an unfair labor practice for the employer to bargain with the employees when their revocation of the union's authority was made conditional upon the majority's agreement to abandon collective bargaining altogether, even for an unspecified time.

We think it plain that the findings of the Board do not admit of either of these dispositions of the case. While the negotiations of petitioner with the employees resulted in a wage increase and their abandonment of the union, the negotiations were carried on by certain of the employees purporting to act in behalf of and

[1] It has now long been settled that findings of the Board, as with those of other administrative agencies, are conclusive upon reviewing courts when supported by evidence, that the weighing of conflicting evidence is for the Board and not for the courts, that the inferences from the evidence are to be drawn by the Board and not by the courts, save only as questions of law are raised and that upon such questions of law the experienced judgment of the Board is entitled to great weight. See Franks Bros. Co. v. Labor Board, No. 521, decided this day; Labor Board v. Southern Bell Co., 319 U. S. 50, 60, and cases cited; Labor Board v. Nevada Copper Co., 316 U. S. 105, 106-107, and cases cited; cf. Dobson v. Commissioner, 320 U. S. 489, 501, and cases cited.

to represent a majority. Nothing appears which would suggest, as the concurring judge thought, that any of the employees during or as a result of the negotiations had by agreement or otherwise foreclosed themselves from continuing such bargaining through the same or any other representatives whom they might choose. Nor in the circumstances disclosed by the evidence and the Board's findings can we say that it was of any significance whether, as the Court of Appeals thought, the employees' offer to abandon the union originated with them or was inspired by the employer. For in either case, as will presently appear, we think that the negotiations by petitioner for wage increases with any one other than the union, the designated representative of the employees, was an unfair labor practice. We think that the Board's order should have been enforced for the reasons stated by it.

The petition for certiorari does not challenge the Board's findings that the union represented a majority of the employees in petitioner's shipping department, and that they constituted a proper bargaining unit and that petitioner had agreed to bargain with the union. The evidence shows and the Board found that when the employees opened their negotiations with petitioner's manager on June 7th, they had not repudiated the union. On the contrary they made it plain that their proposal for its abandonment was contingent upon petitioner's willingness to give the desired wage increases. The evidence also shows, as the Board found, that the employees did not withdraw their designation of the union as their bargaining representative until after they had voted to accept the wage increases, and that until then, they had held themselves out as union members throughout their negotiations with petitioner and its representatives.

The National Labor Relations Act makes it the duty of the employer to bargain collectively with the chosen representatives of his employees. The obligation being exclusive, see § 9(a) of the Act, 29 U. S. C. § 159(a), it exacts "the negative duty to treat with no other". *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1, 44; and see *Virginian Railway Co.* v. *System Federation*, 300 U. S. 515, 548-549. Petitioner, by ignoring the union as the employees' exclusive bargaining representative, by negotiating with its employees concerning wages at a time when wage negotiations with the union were pending, and by inducing its employees to abandon the union by promising them higher wages, violated § 8(1) of the Act, which forbids interference with the right of

employees to bargain collectively through representatives of their own choice.

That it is a violation of the essential principle of collective bargaining and an infringement of the Act for the employer to disregard the bargaining representative by negotiating with individual employees, whether a majority or a minority, with respect to wages, hours and working conditions was recognized by this Court in *J. I. Case Co.* v. *Labor Board*, No. 67, 1943 Term; cf. *Order of Railroad Telegraphers* v. *Railway Express Agency, Inc.*, No. 343, 1943 Term, both decided February 28, 1944; see also *National Licorice Co.* v. *Labor Board*, 309 U. S. 350, 359-361. The statute guarantees to all employees the right to bargain collectively through their chosen representatives. Bargaining carried on by the employer directly with the employees, whether a minority or majority, who have not revoked their designation of a bargaining agent, would be subversive of the mode of collective bargaining which the statute has ordained, as the Board, the expert body in this field, has found. Such conduct is therefore an interference with the rights guaranteed by § 7 and a violation of § 8(1) of the Act.[2] There is no necessity for us to determine the extent to which or the periods for which the employees, having designated a bargaining representative, may be foreclosed from revoking their designation, if at all, or the formalities, if any, necessary for such a revocation. Compare *Labor Board* v. *Century Oxford Mfg. Co.*, — F. 2d —, C. C. A. 2d, decided February 15, 1944. But orderly collective bargaining requires that the employer be not permitted to go behind the designated representatives, in order to bargain with the employees themselves, prior to such a revocation. And it is the fact here, as found by the Board, that the employees did not revoke their designation of the union as their bargaining agent at any time while they were themselves negotiating with petitioner, and that they left the union, as they had promised petitioner to do, only when petitioner had agreed to give them increased wages.

Quite apart from the Board's finding of an unfair labor practice in petitioner's direct negotiations with its employees when

[2] That the Act "carries the clear implication that employers shall not interfere" with the right of collective bargaining "by bargaining with individuals or minority groups in their own behalf, after representatives have been picked by the majority to represent all", was recognized by the reports of the Congressional committees recommending the adoption of the bill which became the National Labor Relations Act. Sen. Rep. No. 573, 74th Cong., 1st Sess., p. 13; H. Rep. No. 1147, 74th Cong., 1st Sess., p. 20.

they had not revoked their designation of the union, there can be no question but that it was likewise an unfair labor practice for petitioner, in response to the offer of its employees, to induce them by the grant of wage increases, to leave the union.[3] *Labor Board* v. *Falk Corp.*, 308 U. S. 453, 460-461. This violation of § 8(1) was in itself sufficient to support the Board's order to cease and desist. The words and purpose of §§ 7 and 8(1) of the Act enjoin an employer from interfering with, or coercing, its employees in their rights to self-organization, to form, join, or assist labor organizations, and to bargain collectively through representatives of their own choosing. There could be no more obvious way of interfering with these rights of employees than by grants of wage increases upon the understanding that they would leave the union in return. The action of employees with respect to the choice of their bargaining agents may be induced by favors bestowed by the employer as well as by his threats or domination. *International Ass'n of Machinists* v. *Labor Board*, 311 U. S. 72; *Labor Board* v. *Falk Corp.*, *supra*; *Labor Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 266-268.

Petitioner contends that it would be equally an unfair labor practice to refuse the wage increases as to grant them, for that would influence the employees to stay in the union, instead of abandoning it. But either consequence, as well as any violation of the Act, would in this case have been avoided if the employer, as is its statutory duty, had refused to negotiate with any one other than the duly designated bargaining representative of his employees. We are not now concerned with the question whether, in other circumstances, such action would have been an unfair labor practice. Nor does that possibility relieve petitioner of the consequences of its unfair labor practices which the Board has found.

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[3] We find no evidence in the record that petitioner's representatives stated to the employees either in terms or in substance, "We will give you the [wage] increases *and you can do as you please about the union*". From the evidence, which fully supports the findings, it appears that the employees proposed to petitioner's manager on June 7th that they would leave the union if they were given wage raises; that the manager adjourned the meeting with the employees until June 9th in order to consider the suggested wage increases with petitioner's president. On that date, after considering the matter with the president, the manager announced to the employees that wage increases would be given, and this was immediately followed by the employees' desertion of the union. It also appears that it was petitioner's normal practice to grant wage increases only at the close of the year. From these facts the Board could conclude, as it did, that the purpose and the effect of the wage increases was to induce petitioner's employees to leave the union.

Petitioner was not relieved from its obligations because the employees asked that they be disregarded. The statute was enacted in the public interest for the protection of the employees' right to collective bargaining and it may not be ignored by the employer, even though the employees consent, *Labor Board* v. *Newport News Co.*, 308 U. S. 241, 251, or the employees suggest the conduct found to be an unfair labor practice, *National Licorice Co.* v. *Labor Board, supra*, 353, at least where the employer is in a position to secure any advantage from these practices, *H. J. Heinz Co.* v. *Labor Board*, 311 U. S. 514, 519-521, and cases cited.

Petitioner cannot, as justification for its refusal to bargain with the union, set up the defection of union members which it had induced by unfair labor practices, even though the result was that the union no longer had the support of a majority. It cannot thus, by its own action, disestablish the union as the bargaining representative of the employees, previously designated as such of their own free will. *Labor Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 339-340; *International Ass'n of Machinists* v. *Labor Board, supra*, 82; cf. *National Licorice Co.* v. *Labor Board, supra*, 359. Petitioner's refusal to bargain under those circumstances was but an aggravation of its unfair labor practice in destroying the majority's support of the union, and was a violation of §§ 8(1) and (5) of the Act.

The Board rightly determined that petitioner had engaged in the unfair labor practices which the Board found, and this determination supports its order directing the cessation of those practices. The petition for certiorari has raised no question as to the propriety of the Board's order directing petitioner to bargain with the union, which was also sustained and ordered enforced by the Court of Appeals. We therefore have no occasion to consider that part of the order here. Compare *Franks Bros. Co.* v. *Labor Board*, No. 521, decided this day.

Affirmed.

Mr. Justice ROBERTS dissents.

SUPREME COURT OF THE UNITED STATES.

No. 265.—October Term, 1943.

Medo Photo Supply Corporation, Petitioner, vs. National Labor Relations Board.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 10, 1944.]

Mr. Justice Rutledge, dissenting.

I dissent. The story told by this record is not of a dominating or intermeddling employer, interfering with employees in their collective bargaining arrangements or activities. It is rather of one which sought to do no more than meet its employees' wishes, freely formed and freely stated; and at the same time to be sure it would do nothing to violate the law governing their relations. The record is barren of any evidence of trouble or real dispute between Medo and its employees, of hostility by Medo to unions or employee organization, or of any refusal to bargain collectively as the statute requires.[1] On the contrary, it shows without contradiction that Medo regarded these things as wholly for the employees to settle among themselves; that it scrupulously sought to keep hands off; and that it was willing to bargain with them by whatever agency they might select. These attitudes were qualified only by the company's desire to be sure that the union was entitled legally to represent the employees and to avoid being caught in a possible jurisdictional dispute between the A. F. of L. and the C. I. O.[2]

The Board has found that Medo was guilty of unfair labor practice in three respects: (1) in dealing directly with the employees, rather than through the union, on June 7 and 9; (2) in refusing to deal with the union; (3) in granting the increased wages sought by the employees. On the facts, (1) and (2) come

[1] There was no refusal to bargain with the union until June 9, 1941, after the employer and the employees had reached a full agreement. Cf. note 6 *infra*.

[2] Cf. note 5 *infra*.

to the same thing, that before June 7 the union had acquired legal status as exclusive bargaining agent, which was effective to require Medo to deal only with it, and that this was not validly revoked then or later. The same things are subsumed by (3), which however poses the further question whether granting the increase in itself was an unlawful interference. The questions thus presented may be pictured more accurately in the light of further facts.

There is no evidence of labor trouble or employee dissatisfaction prior to May, 1941. On the contrary, for all that appears, relations were peaceful and harmonious. During that spring the A. F. of L.[3] put on a campaign to organize all photographic supply stores in New York. In May it got around to Medo. The company had about 70 employees. Of these, about 25 or 26 (including some supervisory employees) were in the shipping and receiving department, doing manual labor in the plant's basement. The others were clerical employees and salesmen, working upstairs. Stoltman, the A. F. of L. organizer, started out in May to organize all of Medo's employees in a single unit. Apparently he was not successful upstairs. But by May 23 he had signed up 18 of the downstairs men. He and they then decided to limit the unit to the basement, and requested the employer to negotiate. At the same time the union applied to the Board for certification. There was some short delay, owing to the absence of Medo's president over the Memorial Day holiday. But on June 4, at the Board's arrangement, the first conference concerning recognition was held.[4] Several followed between that time and Saturday, June 7, when the employees intervened for themselves.

At all times Medo showed willingness to negotiate. But it also wished to be sure, as it had both the right and the duty to be, that the unit was appropriate and the union had a majority of the employees.[5] Medo further wanted to know something about

[3] Acting through the American Federation of Photo Employees Union, Local 21314, of which Stoltman, chief union figure in this case, was president.

[4] The Board's part in bringing about the conference was due solely to the union's having applied to it for certification simultaneously with the making of its first demand upon Medo to negotiate with it, not to any refusal by Medo to negotiate concerning recognition.

[5] It felt, as Stoltman did at first, that there should be one unit in the small plant and was fearful of becoming involved in a jurisdictional dispute if the A. F. of L. should organize the unit downstairs and the C. I. O., which was actively organizing such units, should come in and organize the clerical and sales employees working upstairs.

The union clearly had a majority of the claimed unit from May 23 to June 7, since 18 of the 25 or 26 employees embraced in the unit had signed member-

the terms the union would demand, if recognized; not wishing, as it said, to "buy a pig in a poke." All of these things were matters of discussion between Stoltman and various company representatives in the conferences held on June 4 and 5. But it was not until the latter date that Stoltman finally submitted his substantive demands to Medo through Seligsberg, its attorney.

The Board's findings, in effect, are that on June 5 Seligsberg, in this conference with Stoltman, conceded finally all questions of representation, that is, of appropriateness of the unit and the union's majority status. Hence it concluded Medo then recognized the union as collective agent and, consequently, the only thing remaining for further discussion was the terms of the collective agreement. This finding is the basis for the Board's conclusion that Medo was guilty of unfair labor practices when it later dealt directly with the employees rather than through the union. Medo, however, says that all three questions remained open for final action by it at the conference scheduled for Monday, June 9, but not held because the employees intervened directly in their own behalf on Saturday, June 7.[6]

Seligsberg made particular statements in his conference with Stoltman on June 5 which, if disconnected from the context of the whole conversation and treated as in themselves stating the employer's entire position, could be taken as indicating intention to close the discussion on appropriateness of the unit and the

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ship application cards and none had revoked his application or membership in that period.

The company, however, had to take Stoltman's word for this. It asked him for proof that his union represented a majority, but he declined to submit it, saying he would submit the cards only to a Board representative. The record does not show that Medo ever was given proof that the union had lined up its claimed and actual majority. This was one of the things which, in my opinion, the record shows was held for discussion and determination at the conference scheduled for June 9. Cf. text *infra* notes 6-10.

[6] It is undisputed that the employees, entirely of their own motion and without any stimulus or suggestion by Medo, on Saturday morning, June 7, sought a conference with Medo's officials, without disclosing their purpose. The request was granted and the conference held Saturday afternoon. As it opened one of the men mentioned the "union situation." But Medo's general manager, Hoppin, at once and flatly declined to discuss that, saying he would discuss anything else. The men then stated their desire for an increase in wages, and not to have the union. They specified the wages sought and Medo's reply, granting them in part, was given the following Monday morning, June 9. On Monday afternoon there was also a conference with Stoltman, but because of the turn events had taken by the employees' intervention it served only as the occasion for notifying him that Medo and the employees had reached agreement and therefore the company would not deal further with the union.

union's majority status. These statements are the Board's only foundation for finding that Medo at any time conceded recognition to the union with finality. In my opinion it would do violence to the facts to regard them as sufficient to sustain these findings. The employer was entitled to a reasonable time for ascertaining the union's status before dealing with it[7] and this had not expired on June 7 or, for that matter, on June 9.[8] Prior to June 5 all questions were open. The conference then was not begun, carried through or concluded with any intention or purpose that understandings which might be reached were or could be taken to be final. Medo's representative was doing a lawyer's job,[9] which was to see how far he and Stoltman could agree on terms to be considered by his client as a basis for final decision. They had been successful previously in bringing other employers and employees together in more difficult disputes and the whole intent of their conference was to find a basis of possible agreement upon all matters, including representation,[10] for consideration by

[7] Cf., e. g., North Electric Mfg. Co. v. National Labor Relations Board, 123 F. 2d 887 (C. C. A.); Texarkana Bus Co. v. National Labor Relations Board, 119 F. 2d 480, 484 (C. C. A.). See also National Labor Relations Board v. Union Pacific Stages, Inc., 99 F. 2d 153, 158-159 (C. C. A.).

[8] It is to be recalled that the whole period from demand by the union on Medo to negotiate to the time the employees intervened extended only from May 23 to June 7, and that the period of active negotiation began on June 4. Three days, or even a little more than two weeks, is hardly too much under the circumstances here present to allow an employer for determining whether the union meets the statute's requirements.

[9] Seligsberg's testimony was: "That was the purpose of the postponement. They were to bring us proof of representation. We were both to study the question of the unit, and we were to study it—and when I say 'we,' I mean the employer, because *except as to language*, I wouldn't know anything about it. They were to study it. Mr. Hoppin and Mr. Goodfield and Mr. Niemeyer, if he were there—which I don't remember—were to study the proposed terms and see how they compared with the possibilities." (Emphasis added.) Seligsberg consistently testified that he and Stoltman considered "all three questions together, proof of majority, proof of unit, and the contract." He was a director and secretary of the company, but not a shareholder.

[10] In the conference Seligsberg renewed a previous request for proof that the union had a majority and conditioned the discussion upon the company's being satisfied in this respect and that the unit was appropriate. Cf. note 9 *supra*. However, Stoltman again refused to exhibit the cards and renewed his offer only to submit them to a Board representative for comparison with Medo's payroll. The record does not show this was ever done, although in my opinion, contrary to the Board's findings, it does show conclusively that the parties contemplated it would be done and that the result of the comparison would be given to Medo before the negotiations should be concluded with finality of recognition.

Medo for its final decision and with a view to further discussion and possible final settlement in the conference agreed upon for June 9. To tear Seligsberg's statements out of this setting and context and make of such tentative understandings or bases of further negotiation final concessions of recognition is to draw inferences wholly unwarranted by the record. It is therefore not at all clear that on June 7 negotiations had passed beyond the stage of recognition or, consequently, that the union then was legally entitled to act as exclusive bargaining agent.

But even assuming that Medo on June 5, through Seligsberg, conceded recognition, still I cannot agree that it committed any unfair labor practice, under the facts shown here, either in merely hearing what the employees had to say or, after declining to be drawn into discussion of their relations with the union,[11] in granting unconditionally their freely made and wholly uncoerced request for an increase in wages. In my view it is immaterial that this, in effect, short-circuited the union, for two reasons. One is that, under the special circumstances, the employees had the right to revoke the designation and did so by undertaking to deal for themselves; the other, which is perhaps but a different way of stating the first, is that the union itself had no right or interest sufficient to prevent them from doing so.

At most the employer did nothing more than accede to the wishes of a clear majority, both in listening to their request and in granting it. There is no claim or semblance of proof that Medo induced the men to make the request. On the contrary, it is not disputed that, when they asked for the conference on June 7, the request came unexpectedly to Medo. And when, at the start of the conference the men mentioned the union situation, Medo's general manager, Hoppin, stated at once and flatly that he would not discuss their union affairs or relations with them, clearly implying that this was their business exclusively, not the company's.[12] Asked whether he would discuss other matters, he

[11] Cf. note 6 *supra*.

[12] Cf. note 6 *supra*. Hoppin's testimony was in response to the question "What happened after they came to your office?" (on Saturday afternoon): "They came up and said that 'We have decided that we don't want to have anything to do with the union.' I immediately stopped them, and I told them that if there was anything at all pertaining to any union activities, I did not want to listen to them at all, but if it was anything else they had to offer, I would be willing to listen to them."

answered affirmatively. The men thereupon said they wanted the increase and there is some evidence they also said unconditionally that they did not want the union.[13] The Board, however, has found that they coupled the two statements conditionally, namely, that they did not want the union, if they could have the increase without it.

The Board concluded that Medo's action on June 9 in granting the increases, though less than what were requested, "constituted interference with the self-organizational rights of its employees," on the theory that this influenced them to abandon the union. It also held that the employees' action in approaching the company on June 7 did not "constitute an implied revocation of their designation of the Union so as to relieve the respondent of the obligation to deal solely with it," and therefore dealing directly with them was a violation of Medo's statutory duty to the union and an unfair labor practice. The Board's theory was, apparently, that the men, to revoke their designation, were required to communicate the revocation to the union and that the union had acquired such an interest or status no other act could terminate the agency, however inconsistent with its continued existence and exclusive character.

The statute makes no provision that the agency, once created, shall continue for any specific time. It prescribes no particular method for terminating, as it makes none for creating,[14] the agency. Greater formality hardly would seem to be required in the one case than in the other. The statute purports to be drawn in favor of protecting the interests of employees, not those of unions as such.[15] True, while the agency exists it is exclusive for its appropriate purposes. But it is so only while it does exist and the question here is whether it continued in force after the

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[13] Hoppin testified he was told: "We have one thing that we are primarily interested in. The working conditions here are excellent. We are very happy with our jobs, but we would like to get more money."

[14] Cf. Lebanon Steel Foundry v. National Labor Relations Board, 130 F. 2d 404 (App. D. C.).

[15] Whatever justiciable "interest" the union may have in continuing to act as the employees' representative, its status as such is for the principal's benefit, not its own, and is terminable at the former's will. Cf. Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, 237; National Labor Relations Board v. Sands Mfg. Co., 306 U. S. 332, 344; National Labor Relations Board v. Fansteel Metallurgical Corp., 306 U. S. 240, 261-262; National Labor Relations Board v. Remington-Rand, Inc., 94 F. 2d 862, 869-870 (C. C. A.); National Labor Relations Board v. Lion Shoe Co., 97 F. 2d 448.

employees took matters into their own hands and showed to the employer by that act that they wanted to deal for themselves, not through the union.

The Board implies and the Court says the employer should have declined to discuss with them any matter which was appropriate for collective bargaining, since the union was their agent for this purpose. Therefore, it is concluded, the employer violated their rights under the statute to bargain collectively. This, although it is conceded the twelve employees spoke for 18 of the 25 or 26 in the unit and it does not appear that what they did was disapproved or repudiated by the other six or seven. Merely to state this proposition should be enough to negate it. For it preserves rights of employees to bargain by representatives of their own choosing by destroying them. In all normal agency relations, except those "coupled with an interest,"[16] the principal can revoke them by exercising the agency himself.[17] He need not notify the agent. When he acts on his own behalf, he exhausts the subject matter of the agency and it comes to an end.

Unless a designated union acquires, by its selection, a thraldom over the men who designate it analogous to the power acquired by one who has a "power coupled with an interest," unbreakable and irrevocable by him who gave it, it would seem that any powers the union may acquire by virtue of the designation would end whenever those who confer them and on whose behalf they are to be exercised take them back of their own accord into their own hands and exercise them for themselves. And this should be true, whether or not previous notice is given to the union and whether or not the subject matter of the resumption may include, as one consequence of the dealing, the possible continuance of the agency. For it is the very taking back of the right to deal with their employer, not what he does in response to this, unless that creates some new pressure or influence not contemplated in the employees' freely made proposals, that shows the intent to destroy the agency. Dealing for themselves and dealing exclusively through the agent cannot coexist. The one wholly excludes the other and the real question becomes, which is to prevail, the

[16] See, e. g., Hunt v. Rousmanier's Administrators, 8 Wheat. 174; Lake Mortgage Co. v. Crenshaw, 93 Cal. App. 411; Hall v. Bliss, 118 Mass. 554; Note (1930) 39 Yale L. J. 110.

[17] See, e. g., Ahern v. Baker, 34 Minn. 98; Mott v. Ferguson, 92 Minn. 201; White & Hoskins v. Benton, 121 Iowa 354; Gilbert v. Holmes, 64 Ill. 548.

agent's interest and right or the principal's, the union's or the employees'?

I do not think Congress intended, by this legislation, to create rights in unions overriding those of the employees they represent.[18] Nor did it require a special form or mode for ending a collective agency any more than for creating it. What Congress did was to give the designated union the exclusive right to bargain collectively as long as, and only as long as, a majority of the employees of the unit consent to its doing so. When that majority vanishes by the employees' voluntary action, whatever form this may take, and the fact is made unmistakably clear to the employer, it not only is no longer under duty to deal with the union; it comes under affirmative obligation not to do so. For otherwise it would be dealing with a representative not of the employees' choice.

There are two possibly applicable limitations. One is that the employer must not interfere to bring about the abandonment. The other is that, in large units, where there are difficult problems of ascertaining whether a majority exists at a particular time, a reasonable degree of stability in employment relations may require, to give the statute workable operation, that a majority designation be deemed to continue for a reasonable period, though changes meanwhile may take away the clearly existing majority, a question not yet finally determined.[19]

The latter limitation, if it is one, can have no reasonable application to a small unit and a small employer under circumstances like those involved here. In such a situation to impose it, where the actual desires of the majority may be easily and readily ascertained at any time, would be to force men into unions and into dealing with their employers through unions contrary to the employees' own wishes. The statute has no such purpose.

But it is said the other limitation applies here, that the employer shall offer no inducement and exert no influence to secure abandonment. This, too, is a salutary principle when properly applied. And it may be applied as well to a small unit and a small employer as to large ones. But again the limitation is not universally applicable. Whether it is applicable or not depends

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[18] Cf. note 15 *supra*.

[19] Cf. National Labor Relations Board v. Century Oxford Mfg. Corp., — F. 2d — (C. C. A.), decided February 15, 1944.

upon what the employer does. Clearly if he stimulates a proposal from the employees to abandon the union for any substantial advantage he may give, the limitation should be effective. But does he do this when, with no suggestion or intimation on his part, when rather he has shown every willingness to leave the whole matter of their organization to his employees and to deal with them in any way they wish, they come to him, without influence, without coercion, and make a proposal wholly of their own conception and desire?

It is not impossible for men to want wage increases and also to remain or become nonunion men at the same time. Nor is such a combination of desires illegal. When such a proposal is thus made, and the employer does no more than was done here, namely, accede to it, knowing he is dealing with a majority of the unit, saying in effect, "Whether or not you have a union is your own business, not mine. But whether you do or not, you get the increase you want," then in my judgment two things have happened: (1) The employees have revoked the collective agency, as they have a right to do; and (2) the employer has been guilty of no unfair labor practice either in hearing their proposal or in acceding to it. He has done no more than comply with the wishes of the majority, freely formed and freely stated. And this it is the employer's duty to do under the statute. If thereby the union has been by-passed, it is not through the employer's action, but rather through that of the employees. The employer's response, so limited, is not a violation of the principle, recently stated here,[20] that individual employees cannot deal with the employer to create terms in the contract of employment inconsistent with the collective agreement. Such a situation presents no case of inconsistent individual bargaining. It involves rather one of collective bargaining, not by individuals as such, but by the majority on behalf of the unit.

Finally, if more is needed, the matter should be considered in the light of Medo's predicament when the employees made the proposal, account being taken of the alternative courses open to it. Under the Court's ruling it was between the devil and the deep blue sea. There was no answer Medo could give which would not

[20] J. I. Case Co. *v.* National Labor Relations Board, No. 67, this Term; Order of Railroad Telegraphers *v.* Railway Express Agency, Inc., No. 343, this Term, both decided February 28, 1944.

leave it open to a charge and a finding of unfair labor practice. The employees wanted an increase, according to the findings, with the union if they could not get one without it; without the union, if they could. The main thing in their minds was the increase, not the union.[21] In effect, according to the findings, they said so to their employer. It had to keep silent or reply. It could reply in several ways: (1) The union is your exclusive agent and we cannot deal with you while it is such; (2) we will give you the increase if you discharge the union; do that and then come back; (3) we will give you the increase and you can do as you please about the union; (4) we will not give the raise, union or no union.

The Court says the company's reply should have been (1), whereas its response actually was (3).[22] It finds the latter bad because in effect it offered "inducement" to the employees to abandon the union. The trouble is that the same thing would have been true of (1) or of any of the other possible replies. Answers (2) and (4) clearly would constitute unfair labor practices, under the Court's view, the former as offering inducement to abandon, the latter as a flat refusal to bargain through the union or otherwise. Answer (1), while purporting to say only that the employer could not deal with anyone as long as the union retained its exclusive agency, in fact would be infected with two faults. One would be the assumption that the employees could not revoke the agency and take matters back into their own hands, without giving prior notice to the union, a question involved in the issues here. But, even more plainly, by making this response the employer would open itself to the charge and to the finding that it had said, in effect: "We cannot deal with you directly while the union's agency stands unrevoked," and thereby had offered, by clear implication, the inducement of dealing with the employees directly, conditioned upon their discharging the union.

The only other answers open to the employer were (3), the one Medo actually made, and to remain silent. Merely ignoring the employees might have been taken to mean anything, but more

[21] Cf. note 13 *supra*.

[22] That this is the fair meaning of Medo's response is clear from its refusal to discuss or interfere in the employee's union activities, cf. note 12 *supra*.

probably answer (4) than any other. Silence therefore afforded no escape from the trap. Nor does the Act require silence in such a situation. Consequently answer (3), which Medo gave, was the only one it could give consistently with the view that the employer should hold out no inducement to the employees to abandon the union. In effect it said simply, "We are perfectly willing you should have the increase. But whether you have it through the union or without it is entirely your own business and we will not have anything to do with this." Any other reply would have been a counter-proposal offering inducement to abandon or a rejection of all bargaining. The answer Medo gave was neither. It was merely accession to the employees' wishes, not "inducement" or offer held out; and it was coupled with the clear indication, under the circumstances, that what the employees might do about the union was wholly their own affair and none of Medo's.

Accordingly, I think Medo gave the only possible answer consistent with the statute's requirements and purposes and the only one which afforded no substantial basis for finding either that it was refusing to bargain collectively or that it was interfering with the employees' rights of organization by offering inducement to get rid of the union. In my opinion the Wagner Act was not designed or intended to put an employer, whose sole purpose and conduct are to give his employees completely free rein in matters of organization and collective bargaining, on such a spot that anything he may do will be, or will form the basis for a finding that it is, an unfair labor practice. So to construe the Act not only would make it a trap for employers, but also would defeat the very purposes the statute was intended to accomplish, by fastening upon employers and employees alike union domination the latter do not want. This would be to destroy, not to safeguard, the employees' basic right of collective bargaining by representatives of their own choosing. I would reverse the judgment with instructions to dismiss the petition for enforcement.